

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

v.

LAWRENCE FRIEDMAN,

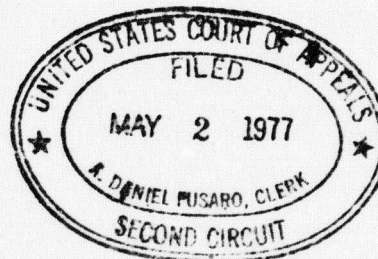
Defendant-Appellant.

On Appeal From The United States District
Court For The Southern District Of New York

APPENDIX

FREDERICK H. BLOCK
Attorney for Defendant-Appellant
919 Third Avenue
New York, N.Y. 10022
(212) 752-4433

ROBERT B. FISKE, JR.
United States Attorney
Attorney for Appellee
1 St. Andrews Plaza
New York, N.Y. 10007



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DOCKET ENTRIES

April 13-1977 -- Filed transcript of proceedings dated
March 4, 1977.

- 11-14-75 Filed indictment and ordered sealed. B/W's ordered for
all defts...Weinfeld, J.
- 1-6-76 Indictment ordered unsealed...Bonsal, J.
- 1-19-76 No appearance. Court directs entry of not guilty plea.
B/W issued. Case assigned to Judge Lasker for all purposes.
Metzner, J.
- 1-23-76 Filed the following papers rec'd from the Magistrate
Goettel (No. 76-32)
Docket sheet entry.
Warrant for Arrest - SDNY
Disposition sheet
Financial Affdvt - CJA 23
Criminal Indictment (Copy)
- 5-5-76 Filed Gov'ts requests for voir dire.
- 5-13-76 Filed Defts. Notice of Motion for an order to dismiss the
indictment.
- 5-13-76 Filed Dfts. Memorandum in support of motion to dismiss
Indictment.
- 5-27-76 Filed Govts. Affdvt. of Alexander F. Smith Jr. in opposition
to motion of deft. Lawrence Friedman.
- 5-27-76 Filed Gov'ts Memorandum of law in opposition to motion of
defts. Lawrence Friedman.
- 6-8-76 Filed Dfts. Reply Affdvts. in opposition to affdvts. of
Messrs. Smith, Hall & Flynn.
- 6-8-76 Filed Defts. Reply Memorandum.
- 7-8-76 Filed Gov'ts Memorandum in opposition to dfts. application
for dismissal.
- 7-8-76 Filed transcript of record of proceedings, dated 9-23,27-76.
- 12-2-76 Filed Memo. End. on motion dtd. 5-13-76. Motion Denied, as
indicated. Lasker J.
- 1-4-77 Filed Dfts. Notice of Motion & supporting affdvt. for an
order dismissing indictment. Ret. 1-10-77.
- 1-28-77 Dft. Laurence Friedman pres.w/atty. Frederick A. Block, Dft.
withdraws his plea of Not Guilty & now pleads Guilty to Ct.
One Only of this indictment. Sentence set for March 4, 1977.
Lasker J.

2-7-77 Filed transcript of record of proceedings dated 11-29-76.

3-11-77 Filed Defts. Notice of Appeal from sentence imposed on
3/4/77. (mailed notice)

3/24/77 Filed transcript record of proceedings dtd: 1/27/77.

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

INDICTMENT

75 Cr. 1098

ARMANDO SUAREZ-BOLET,
JEFFREY RUDD,
JEFFREY NACH,
LAWRENCE FRIEDMAN,
BRUCE BERLIN,
GERY UGARTE,
RUSSEL KORY and
ALLEN FINKEL,

Defendants.

The Grand Jury Charges:

1. From on or about the 1st day of June 1975, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, ARMANDO SUAREZ-BOLET, JEFFREY RUDD, JEFFREY NACH, LAWRENCE FRIEDMAN, BRUCE BERLIN, GERY UGARTE, RUSSEL KORY and ALLEN DINKEL, the defendants and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule II controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1)

and 841(b) (1) (B) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

(1) In or about June of 1975 the defendant JEFFREY RUDD, while in an apartment at 221 East 60th St., New York, N.Y. showed a sample of quaalude tablets to another person.

(2) In or about August of 1975, the defendant JEFFREY RUDD, while in an apartment at 221 E. 60th St., New York, N.Y. transferred between 25,000 and 50,000 quaalude tablets to another person.

(3) In or about the latter part of August, 1975 the defendant RUSS KORY received 25,000 quaalude tablets from the defendant JEFFREY RUDD.

(4) In or about August of 1975, the defendant JEFFREY NACH transported between 25,000 to 50,000 quaalude tablets to New Jersey for distribution to GERY UGARTE and LAWRENCE FRIEDMAN.

(5) In or about the last week of August 1975, the defendant JEFFREY RUDD came from Ft. Lauderdale, Florida to Newark, N.J. with about 40,000 quaalude tablets which were stored in Clifton, N.J.

(6) In or about early September 1975, the defendant JEFFREY RUDD while in Queens, New York transferred 20,000 quaalude tablets to the defendants ALLEN FINKEL and JEFFREY NACH.

(7) In or about early September 1975, the defendant JEFFREY RUDD telephonically contacted the defendant JEFFREY NACH instructing NACH to pick up 18,000 quaalude tablets from ALLEN FINKEL.

(8) On or about September 24, 1975, the defendant JEFFREY NACH while in Clifton, New Jersey transferred approximately 10,000 quaalude tablets and soon thereafter destroyed approximately 40,000 quaalude tablets.

(9) On or about September 24, 1975, the defendant LAWRENCE FRIEDMAN while in Clifton, New Jersey had in his possession 10,000 quaalude tablets.

(10) In or about September of 1975 the defendants JEFFREY RUDD and BRUCE BERLIN agreed to transfer approximately 20,000 quaalude tablets.

(11) On or about October 2, 1975 the defendant BRUCE BERLIN discussed the delivery of additional amounts of quaalude tablets for the defendant JEFFREY RUDD.

(12) On or about October 7, 1975, the defendants JEFFREY RUDD and ARMANDO SUAREZ-BOLET transported to the area of East 60th Street and Second Avenue, New York, New York approximately 60,000 quaalude tablets.

(13) On or about October 7, 1975, the defendants JEFFREY RUDD and ARMANDO SUAREZ BOLET had in their possession in a 1975 Ford Sedan approximately 60,000 quaalude tablets.

(14) On or about October 16, 1975, the defendant BRUCE BERLIN brought to the area of East 65th Street and First Avenue, New York, New York approximately 500 quaalude tablets and \$11,400 in U.S. currency.

(15) On or about October 17, 1975, the defendant GERY UGARTE delivered \$13,630 to Englewood Cliffs, New Jersey.

(Title 21, United States Code, Section 846).

COUNT II

The Grand Jury further charges:

On or about the 7th day of October 1975 in the Southern District of New York, ARMANDO SUAREZ-BOLET and JEFFREY RUDD, the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately 60,000 quaalude tablets.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(B); Title 18, United States Code, Section 2).

FOREMAN

THOMAS J. CAHILL
United States Attorney

NOTICE OF MOTION TO DISMISS INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

Indictment No. 75 Cr.1098 (ML)

vs.

NOTICE OF MOTION

LAWRENCE FRIEDMAN,

Defendant.

-----x

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of Lawrence Friedman the defendant above named, sworn to May 12, 1976, the indictment herein and all the papers and proceedings heretofore had herein the undersigned will move before Hon. Morris Lasker, United States District Judge at a date, time and place to be fixed by Judge Lasker for an order dismissing the indictment upon the following grounds:

1. That the prosecution breached a valid promise to exchange immunity from prosecution upon compliance by the defendant with certain conditions, which conditions were met.
2. That this prosecution is based on leads obtained from the defendant in derogation of his right to remain silent while in custody so that suppression

of the illegally obtained leads requires dismissal of the indictment,
and awarding such other further and different relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that the Court is requested to seal the papers on this application and to hold any hearing thereon in camera.

Dated: May 12, 1976.

FREDERICK H. BLOCK
Attorney for Defendant
919 3rd Avenue
New York, N.Y. 10022
(212) 752-4433

TO: UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
1 St. Andrews Plaza
New York, N.Y. 10007
Attn: Harry Batchelder, Esq.

AFFIDAVIT OF LAWRENCE FRIEDMAN IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

Indictment No. 75 Cr.1098
(ML)

v3.

LAWRENCE FRIEDMAN,

AFFIDAVIT

Defendant.

-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

LAWRENCE FRIEDMAN being duly sworn deposes and says:

I am the defendant above named. I just became 28 years of age and reside at 458 River Road, Nutley, New Jersey with my wife Margaret to whom I was married last year. I am presently a first year student at Seton Hall Law School and am employed as a substitute teacher in the Newark, New Jersey public school system. I was attending law school at the time of my arrest on September 24, 1975.

I am making this affidavit in support of my motion to dismiss the indictment against me. The motion is based on the ground (1) that I was promised not to be prosecuted by Assistant United States Attorney Flynn of the District of New Jersey in exchange for my undertaking which I carried out to cooperate fully with the narcotics agents and make cases

against persons I knew to be dealers in drugs and (2) on the ground that the leads which furnished the basis for this prosecution were obtained from me in violation of my right to remain silent at the time of my arrest.

The Promise Not To Prosecute

Following my arrest, I was interviewed by Assistant United States Attorney Flynn in Newark in the presence of Agent Smith. After I had advised Mr. Flynn that I was a law student and that, in response to his question, I would be willing to assist the agents to make cases against people I knew to be dealers in drugs, Mr. Flynn told me repeatedly that I would not be prosecuted for anything related in any way to the offense for which I had been arrested in exchange for the described cooperation. He repeated that assurance later on in the interview in the presence of my wife. He also told me that the paper I signed for him (Exhibit A hereto) embodied that assurance. Although I kept my part of the bargain and helped the agents to make three cases, Mr. Flynn did not keep his word as witness the instant prosecution which was instituted after I had cooperated fully in accordance with my undertaking.

The Violations of My Rights

Upon my arrest and while I was being driven from Clifton, New Jersey where I had been arrested to DEA headquarters

in New York City, I was not warned of my rights and the arresting agents pressed me very hard for information about my source. They told me at this time that my wife was being arrested and that she would be lodged overnight in Rikers Island. They painted for me a horror picture about how my wife would be subject to abuse by the black lesbians at that institution. Despite the pressure however, I maintained my silence and said nothing.

On my arrival at DEA headquarters, I was warned of my rights but I steadfastly stated that I had nothing to say and wanted a lawyer. Instead of respecting my right to remain silent, the agents, namely Scotty, Hall and Smith, continued to question and threaten me. In addition to threatening to incarcerate my wife at Rikers Island, the agents told me that they would notify my law school about my arrest.

My wife in the meanwhile had been arrested and had been brought to DEA headquarters. We were kept separate, but I was able to observe from time to time that she was in a completely hysterical state. Ultimately my wife and I were permitted to confer privately and following my talk with her I told the agents what they wanted to know, namely the name of my supplier, because of the enormous pressure which they had

been placing upon both of us. My source was arrested forthwith. I thereafter was called into the interview with him and aided the agents in obtaining his source from him.

My Request For The Sealing Of
These Papers and A Hearing In
Camera

Because of my fear of retaliation I do not want what is said in these papers or what I will testify to at the hearing on this motion to be made known to the general public. Accordingly, I respectfully request that the papers on this application be sealed and that any hearing be held in camera. I understand that I am entitled to a public hearing, but I, for the reasons stated, expressly waive that right.

Conclusion

I have been advised by my attorney and verily believe that on the basis of the foregoing, this prosecution should be dismissed.

Sworn to before me this
12th day of May, 1976.

Lawrence Friedman
Lawrence Friedman

THE NOTARY PUBLIC
Notary Public for the State of New York
Qualified in New York City
Commission Expires March 30, 1977

EX. A

PLEASE ADDRESS ALL MAIL TO
UNITED STATES ATTORNEY
NEWARK, N. J. 07101
AND REFER TO
TPF:pam

A13

United States Department of Justice

UNITED STATES ATTORNEY

FOR THE DISTRICT OF NEW JERSEY
NEWARK, NEW JERSEY 07101

September 25, 1975

I, Laurence Friedman, having been
advised of my right to a speedy arraignment after having
been taken into custody by Federal Agents, do hereby waive
that right in consideration of the suspension of further
criminal proceedings against me, until such time as the
United States Attorney shall have had the opportunity to
evaluate my case in terms of proceeding under a program of
deferred prosecution.

Signed:

Laurence Friedman

Witnesses

Margaret Friedman

Terence M. Flynn



EX. "A"

AFFIDAVIT OF ALEXANDER F. SMITH, JR. IN OPPOSITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

LAWRENCE FRIEDMAN,
Defendant.

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ALEXANDER F. SMITH, JR., being duly sworn deposes
and says:

1. I am a Special Agent of the Drug Enforcement
Administration and as such participated in the arrest of Lawrence
and Margaret Friedman and am familiar with the facts in this action.

2. On September 24, 1975 I participated in the
arrest of Lawrence and Margaret Friedman as a result of their having
distributed 10,000 methaqualone tablets for approximately \$15,000
dollars. On about 9:30 of September 24, 1975 I, and Police Officer
Joseph Pollini of the New York City Police Department placed Lawrence
Friedman under arrest as he was attempting to deliver 10,000
methaqualone tablets. After being arrested Mr. Friedman was searched
and I discovered a knife and I then turned Mr. Friedman over to
Group Supervisor Geoffrey Hall who placed Friedman in a Government
vehicle.

3. I witnessed Group Supervisor Jeffrey Hall read Mr. Friedman soon after Mr. Friedman was placed in the Government vehicle, his Miranda warnings from a D.E.A. Form 13A. I then left to participate in the arrest of Margaret Friedman at the Friedman's apartment where the negotiation and \$15,000 had been given to the Friedman. This was accomplished shortly after 10:00 P.M. by myself and Special Agent Michael Gray. After announcing who we were and identifying ourselves I advised Mrs. Friedman she was under arrest for conspiring with her husband to distribute 10,000 methaqualone tablets. I advised her of her Miranda warnings. Mrs. Friedman appeared to be very upset. I informed her she and her husband would be processed in the Drug Enforcement Administration offices in New York. After about 10 or 15 minutes Mrs. Friedman settled down and I asked her if there was anything valuable in the apartment that she did not feel would be safe if she locked the door. She replied no and I and fellow agents secured the apartment and transported her to New York.

4. On the ride into New York Mrs. Friedman asked me what was happening and I told her again of the offense for which she was being arrested, the penalties for such an offense and that she could help herself if she agreed to cooperate with the Government. During this trip Mrs. Friedman explained she had previously been arrested by the Nutley, New Jersey Police Department for a drug offense. Mrs. Friedman asked if she would have to spend any time being processed by the Nutley Police Department and I informed her no and she stated she was glad of that. Mrs. Friedman on the ride to New York appeared

upset but was not hysterical and was coherent when she questioned me.

5. Upon arrival at the Drug Enforcement Administration Headquarters shortly before 11:00 P.M., I brought Mrs. Friedman to the processing room and I photographed Mrs. Friedman and took her personal history. Upon completion I met Group Supervisor Hall who along with myself informed Mrs. Friedman what she was charged with and the penalties. I believe we informed her at this time that her husband was not cooperating and that any cooperation she might give would be solely for herself. During the events described Mrs. Friedman and Mr. Friedman were kept separate and did not see each other. Mr. Friedman was kept in a detention cell and Mrs. Friedman was detained in the main processing area.

6. Group Supervisor Hall questioned Mrs. Friedman who indicated she was a school teacher in the New Jersey school system and she didn't want to lose her job or go to jail. Almost immediately Mrs. Friedman indicated her husband was only hurting himself if he did not cooperate and she would cooperate to help herself. At this point she identified her drug source as Jeffrey Nach.

7. At about 11:45 P.M. Mrs. Friedman requested to talk to her husband to advise him of her decision to cooperate. This was allowed and in my presence both Friedmans asked to speak to Group Supervisor Hall alone. Group Supervisor Hall took them into a interview room and left the door open and I stood outside. During this conversation Lawrence Friedman asked for guarantees as to his

cooperation such as immunity from all prosecution and guarantees that his law school would not be advised of his arrest. Group Supervisor Hall stated no such guarantees could be made. Margaret Friedman then reprimanded her husband by saying she was going to cooperate with the authorities with or without his cooperation. At this point Lawrence Friedman also agreed to cooperate. Both agreed to make a phone call to the source of supply but it was agreed that Margaret would make such a call and this was accomplished at 12:15 A.M. in the presence of myself and Group Supervisor Hall. Mrs. Friedman also made an additional phone call in the presence of Group Supervisor Hall.

8. Soon thereafter Margaret Friedman agreed to go to Clifton, N.J. to assist in the arrest of Jeffrey Nach. This was accomplished and Mrs. Friedman was allowed to return home on condition that she appear at the United States Attorney's Office the following morning. Lawrence Friedman remained at the Drug Enforcement Administration Office at his request to ascertain the results of Margaret's cooperation and also to assist in identifying Jeffrey Nach's source of supply. After ascertaining Nach's source of supply both defendants were placed in the Metropolitan Correctional Center and were to be arraigned before a United States Magistrate the following day. I advised Lawrence Friedman that Margaret Friedman had returned home and would meet him at the United States Attorney's Office the following morning.

9. I went with Lawrence Friedman to the United States Attorney's Office that next morning and I have read the affidavit of

Terrence Flynn and I adopt the statements he has given in that affidavit. No guarantees as to immunity were given to either Margaret or Lawrence Friedman during their separate interviews.

s/ Alexander F. Smith, Jr.

ALEXANDER F. SMITH, JR.

Sworn to before me this

25 day of May, 1976.

s/ Neal Pagan
NEAL PAGAN
Notary Public, State of New York
No. 4504940
Qualified in Queens County
Commission Expires March 30, 1977

AFFIDAVIT OF JEFFREY HALL IN OPPOSITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

LAWRENCE FRIEDMAN,
Defendant.

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JEFFREY HALL, being duly sworn, deposes and says:

1. I am a Special Agent of the Drug Enforcement Administration and as such participated in the arrest of Lawrence Friedman and am familiar with the facts in this action.

2. On September 24, 1976 I along with Special Agent Alexander Smith, Jr. and others arrested Lawrence Friedman. Mr. Friedman was arrested while delivering 10,000 methaqualone tablets in New Jersey, at about 9:30 P.M. Soon after his arrest, I placed him in a Government vehicle and advised him of his Miranda rights. I asked him who the 10,000 pills came from and he stated he wanted a lawyer and I stopped questioning Mr. Friedman. After a few minutes I transported Mr. Friedman to the Regional Office of the Drug Enforcement Administration and during this ride Mr. Friedman questioned me and fellow officers about what was happening and he also informed us that he was a law student. I told him on two or three occasions to keep quiet.

3. Upon arrival at the Drug Enforcement Administration Headquarters Mr. Friedman was fingerprinted and photographed and I

informed him that his wife was being arrested because of her involvement in the negotiations as well as her counting the anticipated \$15,000 payment for the drugs. I said nothing to Mr. Friedman as to where Mrs. Friedman would be lodged. I advised Mr. Friedman again of his Miranda rights and in the presence of Special Agents Smith and Gray I told him his cooperation could help him and his wife, Mr. Friedman replied he was in law school and he would not cooperate and no further questioning took place.

4. I then met Mrs. Friedman at the Drug Enforcement Administration Regional Headquarters, about 11:00 P.M. I have read the affidavit of Special Agent Smith and adopt his statements as to my discussions with Mrs. Friedman. After my discussions with Mrs. Friedman she asked to speak to her husband to tell him what she was going to do and I allowed them to speak together. Mrs. Friedman told Mr. Friedman in my presence, that she was not going to go to jail for anybody, Mr. Friedman kept asking what guarantees could be given to him if he cooperated. I told him no promises could be given and Mr. and Mrs. Friedman asked me whether Mr. Friedman's law school would be notified. I told them no promises could be made as to law school and that the only promise I could give them would be that their cooperation would be brought to the attention of the sentencing judge. Mrs. Friedman then told me who the source of supply for the Drugs was.

5. After about five or ten minutes Mr. and Mrs. Friedman agreed to make a call to their source of supply. Mrs. Friedman made two calls and accompanied other Agents on their arrest of Jeffrey

Nach. Mrs. Friedman was subsequently allowed to return home on the morning of the 25th subject to reporting to the United States Attorney's office on the following morning. Mr. Friedman remained at Drug Enforcement Administration Headquarters where he asked if he could be present during the interview of Mr. Nach. Mr. Friedman did participate in the interview of Jeffrey Nach.

" Mrs. Friedman was coherent and calm from the time I met her at Drug Enforcement Administration Headquarters until such time as she left my presence to participate in the arrest of Jeffrey Nach.

s/ Jeffrey R. Hall
JEFFREY HALL

Sworn to before me this
day of May, 1976

AFFIDAVIT OF TERENCE P. FLYNN IN OPPOSITION

STATE OF NEW JERSEY

COUNTY OF ESSEX

) SS

A F F I D A V I T

The undersigned being duly sworn deposes and says:

My name is Terence P. Flynn and I am an Assistant United States Attorney for the District of New Jersey. In that capacity I was assigned to handle the matter of United States v. Laurence Friedman immediately after the arrest of the defendant and his wife on September 24, 1975.

The defendant first appeared in my office on September 25, 1975 just prior to the scheduled filing of complaints and the arraignment of the defendant and his wife on charges of distribution of a controlled substance. Special Agent Smith was with me at the time I interviewed the defendant.

I first advised the defendant of his constitutional rights. He then questioned me as to what would next happen to him. I told him that we would next be filing complaints against him and his wife and that he would have to appear before the Magistrate. I spoke to him of cooperation and noted that his wife had been helpful in the apprehension of their source for the illicit narcotics. I explained that all these facts would be made known to the Court at the time of sentencing. I also explained that he had the opportunity to plea and cooperate with the United States. At this time, the defendant indicated a willingness to cooperate. I thanked him and asked him to wait outside while I spoke with his wife and said that

we would be going across the street to the Magistrate shortly. At this point, the defendant said "There's one more thing - I'm a law student." On hearing this, I had him sit down again and berated him for the stupidity of his conduct. He asked if something could be done. He was concerned, as I was, that the filing of charges would jeopardize his law career. He also explained that he had recently been laid off as a teacher in New York. I told him that we would be willing to temporarily suspend the filing of charges against him but that we also would be looking to his continued cooperation in our determination of his good faith. He repeatedly asked for assurances that he would not be prosecuted if he cooperated with the United States. I consistently refused to give him any such assurances.

A short time later he again spoke to me, this time with his wife present. Again he asked for assurances that he would not ultimately be prosecuted. I told him that the choice was his. I was perfectly willing to proceed as planned and file the complaints right away. On the other hand, he could ask for a postponement so that we could look at the case in more detail. I told him that, among other things, I would look at the case in terms of the Brooklyn plan, but I steadfastly refused to commit myself to any course of action. The defendant continued to seek assurances to the point of exasperation for Agent Smith and myself when the defendant's wife advised him to shut-up and accept what he had. At that point both the defendant and his wife signed the Waiver of Speedy Arraignment forms provided them and the meeting was concluded.

A short time later I received a telephone call from the defendant during which he again sought assurances and I again refused to give them.

A few months ago I placed a call to the defendant's home and asked him to come to my office for a meeting. Due to schedule changes, that meeting was cancelled.

s/ Terence P. Flynn
TERENCE P. FLYNN

Subscribed and sworn to
before me this 19th day
of May, 1976.

s/ Alexandria Radeh
A Notary Public of New Jersey
My Commission Expires: 5/28/78

EX. A-

PLEASE ADDRESS ALL MAIL TO
UNITED STATES ATTORNEY
NEWARK, N. J. 07101
AND REFER TO
TPF:pam

United States Department of Justice
UNITED STATES ATTORNEY
FOR THE DISTRICT OF NEW JERSEY
NEWARK, NEW JERSEY 07101

September 25, 1975

I, Margaret Friedman, having been advised of my right to a speedy arraignment after having been taken into custody by Federal Agents, do hereby waive that right in consideration of the suspension of further criminal proceedings against me, until such time as the United States Attorney shall have had the opportunity to evaluate my case in terms of proceeding under a program of deferred prosecution.

Signed:

Margaret Friedman

Witnesses

Lawrence FriedThomas P. Flynn

EXHIBIT A

PLEASE ADDRESS ALL MAIL TO
UNITED STATES ATTORNEY
NEWARK, N. J. 07101
AND REFER TO
TPF:pam

United States Department of Justice

UNITED STATES ATTORNEY
FOR THE DISTRICT OF NEW JERSEY
NEWARK, NEW JERSEY 07101

September 25, 1975

I, Laurence Friedman, having been
advised of my right to a speedy arraignment after having
been taken into custody by Federal Agents, do hereby waive
that right in consideration of the suspension of further
criminal proceedings against me, until such time as the
United States Attorney shall have had the opportunity to
evaluate my case in terms of proceeding under a program of
deferred prosecution.

Signed:

Laurence Friedman

Witnesses

Margaret Friedman

Terence P. Flynn



EXHIBIT B

REPLY AFFIDAVIT OF LAWRENCE FRIEDMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

vs.

Ind. No. 75 Cr. 1098 (M.E.L.)

LAWRENCE FRIEDMAN,

Defendant.

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

LAWRENCE FRIEDMAN being duly sworn, deposes and says:

I have read the opposing affidavits of Messrs. Smith, Hall and Flynn and must reluctantly say that their respective accounts of what happened are not in accordance with the facts in too many respects to mention here. I respectfully stand on my account of what happened as set forth in my moving affidavit. I reiterate that I only revealed my source because the agents kept up a continuous barrage of threats. I further reiterate that Assistant U.S. Attorney Flynn definitely made and broke his promise that I would not be prosecuted for the offense ^(anything related to) for which I had been arrested if I worked with the agents and made cases for them. (12/)

Sworn to before me this
1st day of June, 1976.

Frederick Block
FREDERICK BLOCK
Notary Public, State of New York
No. 10025704
Qualified in New York County
Commission Expires March 30, 1977

Lawrence Friedman

Lawrence Friedman

REPLY AFFIDAVIT OF MARGARET FRIEDMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

vs.

Ind. No. 75 Cr. 1098 (M.E.L.)

LAWRENCE FRIEDMAN,

Defendant.
-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

MARGARET FRIEDMAN being duly sworn, deposes and says:

I am the wife of Lawrence Friedman the defendant herein.
I have read the affidavits in opposition to my husband's motion
and find that the respective accounts of agents Smith and Hall
and of Assistant U.S. Attorney Flynn are not in accordance
with the facts of what happened in many respects. Threats were
definitely made by the agents to induce our cooperation as
recounted by my husband and Assistant U.S. Attorney Flynn
most assuredly promised my husband in my presence that he
would not be prosecuted for ^(anything related to) the offense for which he had been
arrested if he worked with the agents and made cases for them.

Sworn to before me this
4th day of June, 1976.

Frederick H. Block

Margaret Friedman
Margaret Friedman

Notary
Qualified in New York
Commission Expires March 30, 1977

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA : Before:
5 vs. : HON. MORRIS E. LASKER,
6 : District Judge.
7 LAWRENCE FRIEDMAN, :
8 Defendant. : 75 Cr. 1098
9 -----x

10 New York, September 23, 27, 1976

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17 STENOGRAPHER'S MINUTES
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA :
:
vs. :
:
LAWRENCE FRIEDMAN, :
:
Defendant. :
-----X

75 Cr. 1098

BEFORE: HON. MORRIS E. LASKER,

District Judge

New York, New York
September 23, 1976

APPEARANCES:

ROBERT E. FISKE, JR.,
United States Attorney
For the Government
BY: DON BUCHWALD, ESQ.,
Assistant United States Attorney

FREDERICK H. BLOCK, ESQ.,
Attorney for Defendant.

1 md/lf

2 (Case called)

3 MR. BUCHWALD: Ready for the Government.

4 MR. BLOCK: Ready.

5 MR. BUCHWALD: My name is Don Buchwald. Mr.
6 Batchelder couldn't be here this afternoon, he has a
7 number of trials about to begin.

8 MR. BLOCK: If your Honor please, I have a
9 couple of preliminary matters.

10 Number one, I had asked in my moving papers
11 that this matter be held in camera, and I wondered if
12 the doors could be locked, so that the only persons present --
13 this is with the express consent and approval of the defendant

14 THE COURT: Is that so?

15 MR. FRIEDMAN: Yes, your Honor.

16 THE COURT: All right.

17 MR. BUCHWALD: The only thing I would ask, we
18 have one or two witnesses or prospective witnesses who
19 are now testifying before Judge Brieant. If we could put
20 a note on the door --

21 THE COURT: Leave the door open, and if anybody
22 comes in I will ask them to leave.

23 MR. BLOCK: I ask the witnesses be excluded.

24 THE COURT: The clerk will put you gentlemen in
25 the witness room.

md/lf

(Witnesses excluded)

MR. BLOCK: I have one other request, your Honor, and that is this -- that in the event that it should be necessary to have the minutes of this hearing I would ask if your Honor would authorize them to be furnished to me under the Criminal Justice Act. I am assigned counsel under the Criminal Justice Act.

THE COURT: If you are assigned counsel you are entitled to have them, yes.

MR. BLOCK: I would like to proceed, and I will call Mrs. Friedman to the witness stand.

M A R G A R E T F R I E D M A N, called as a witness on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

THE COURT: Mrs. Friedman, I know this is an important time for you and your husband, and you look anxious.

THE WITNESS: Nervous.

THE COURT: Yes, nervous.

This is a formal proceeding, of course, in terms of law, but you don't have to be formal otherwise, so just relax. You are here to tell your story, and your husband is, too, and we will hear you.

DIRECT EXAMINATION

BY MR. BLOCK:

2 Q Mrs. Friedman, are you the wife of the defendant
3 Lawrence Friedman in this case?

5 Q How long have you been married?

8 Q Where do you reside?

9 A 458 River Road in Nutley, New Jersey.

10 Q Do you have any occupation yourself?

11 A Yes, I do.

12 2 What is that occupation?

13 A I am a substitute teacher.

14 Q Where are you a substitute teacher at the present
15 time?

16 A Right now I am subbing in Newark.

17 Q For how long a period of time have you been
18 a substitute teacher in Newark?

19 A For about three months.

20 Q Prior to that had you been in any teaching system?

21 A Yes, before that I was teaching in Passaic for a
22 year and a half.

23 Q I want to direct your attention to September
24 24, 1975. At that time were you living at the same address
25 you are living at now?

1 md/lf

2 A Yes.

3 Q And you were married at that time?

4 A Yes.

5 Q In addition to that were you also engaged as
6 a teacher in Passaic at that time?

7 A Yes.

8 Q On September 24, 1975, did some police officers
9 and agents come to your house?

10 A Yes.

11 Q Directing your attention to that, can you tell
12 us briefly what happened when these people came to your
13 house? Was your husband present?

14 A No, my husband wasn't home.

15 Q About what time of day was this?

16 A It was at night around nine, 9:30. They told
17 me I was arrested and --

18 THE COURT: Do you know now who they were?

19 THE WITNESS: Yes, I do.

20 THE COURT: Would you give me their names?

21 THE WITNESS: Sandy Smith --

22 Q There was a gentleman in this courtroom. Did
23 you recognize him as the one who was there?

24 A He looks a little different, but he was Sandy
25 Smith.

md/lf

Friedman-Direct

5

Q Is that the tall blond-haired gentleman you saw sitting at the table?

A He had short hair last time I saw him.

THE COURT: How many people were there altogether involved?

THE WITNESS: I think there was about three that came to the house, three or four.

THE COURT: Smith, and do you know the names of any of the others?

THE WITNESS: Sandy Smith, Scotty --

THE COURT: Is Scotty his nickname?

THE WITNESS: I am not sure.

THE COURT: All right, and a man named Scotty.

And?

THE WITNESS: And I think Detective Givanelli, who was in the room.

Q I understand Detective Givanelli came into this courtroom just before we started this hearing.

A Yes.

Q Did you recognize him as one of the men who was there?

A Yes.

Q Do you now know he was a police officer?

A Yes.

1 md/lf
2 Q And do you know now Smith and Scotty are federal
3 drug agents?

4 A Yes.

5 Q What happened on this occasion? You were told
6 you were under arrest?

7 A Yes.

8 Q What did you say?

9 A Well, I said, "What's going on? What am I
10 under arrest for?" I believe they said, "Conspiracy."
11 And then they stopped it at that, they didn't say for what.
12 That's all they said, and I just said, "Where are you
13 taking me, what's going on, I don't understand." They just
14 said, you know, "Put your shoes on and come with us."

15 Q So you left the house?

16 A I left the house.

17 Q You got in the car?

18 A I got into the car.

19 Q Was there any conversation in the car?

20 A They wanted to know where my husband was.

21 Q When you say "they," can you pinpoint who it
22 was among these people who said what?

23 A I really can't say if it was Detective Givaneli
24 or Sandy Smith but they were all kind of asking me the same
25 type of questions.

1 md/lf

2 Q What did you say in response to their questions?

3 A "I don't really know where my husband is," and they
4 replied, "How can you not know where your husband is, did
5 he go out of town, where did he go?"

6 Q When you were told you were under arrest, were
7 you given your Miranda warnings?

8 A I don't remember. I can't say definitely yes
9 and I can't say definitely no. I honestly don't remember.

10 Q You don't remember, all right.

11 Now, you got in the car and where were you
12 taken?

13 A I was taken to the D.E.A. headquarters in Manhattan

14 Q When you got to D.E.A. headquarters, did you see
15 your husband?

16 A No. I didn't see him when -- I saw him after I
17 was there for awhile but I was there first.

18 Q What was happening while you were in D.E.A. head-
19 quarters?

20 A They were asking me all sorts of questions.

21 THE COURT: The same people?

22 THE WITNESS: There were more people there. Mr.
23 Jeff Hall was there, and there were a couple of other people.
24 I believe a couple of --

25 Q Do you recall the names of the other people?

1 md/lf
2 A Just Sandy Smith, Scotty, Jeff Hall, there might
3 have been one or two other agents there that I --

4 Q I am asking you if you know their names.

5 A No, I don't.

6 Q You don't know?

7 A No.

8 Q What were you doing when they were asking you
9 questions? Were you responding to the questions?

10 A No. I said, "I don't know. What's going on?
11 I don't know." I believe at this point is when they told
12 me what I was arrested for.

13 Q What were you told you were arrested for?

14 A For qualudes. And I was sitting down and Sandy
15 Smith was typing general information about me.

16 Q In other words, they took your personal history?

17 A Yes.

18 Q Asked you how old you are and so forth?

19 A Yes.

20 Q By the way, how old are you?

21 A 25.

22 Q And they asked if you are married, single, that
23 kind of thing, is that right?

24 A Yes.

25 Q Was anything said about your cooperating?

1 md/lf

2 A Yes.

3 Q Was that at this time before you saw your husband?

4 A I believe so, before I saw my husband, yes.

5 Q What was said on that subject?

6 A They wanted to know who the source was. They
7 said to me that things can only get better for you if you
8 cooperate and help us, and at this point, you know, I
9 just really didn't know what to do. I was confused, I
10 wanted to speak to my husband, and I was hysterically
11 crying, to say the least, but they just wanted to know the
12 source and they wanted as much information as I could give
13 them and they promised --

14 Q Was anything said about jail at this time?

15 A They did threaten me that I was going to go to
16 Riker's Island.

17 Q Who said that?

18 THE COURT: When you say "threatened you," do
19 you remember how they put it?

20 THE WITNESS: Well, if you don't cooperate with
21 us you are going to spend the night on Riker's Island.

22 Q Was anything said about conditions at Riker's
23 Island?

24 A They told me conditions were very bad there,
25 that -- for a young girl such as I it would be very terrifying

1 md/lf
2 experience, and it would be a place where you wouldn't
3 want to go. And I was scared.

4 Q Do you recall who said that to you?

5 A I believe it was Scotty.

6 Q Did there come a time you saw your husband?

7 A My husband then came --

8 Q Just answer the question.

9 A Yes.

10 Q Under what circumstances did you see your husband?

11 A He walked into the room with handcuffs.

12 THE COURT: With handcuffs?

13 THE WITNESS: Yes.

14 Q When he walked into the room with handcuffs, did
15 he stay in the same room you were?

16 A No.

17 Q Where was he placed?

18 A He was put in a cell in another room.

19 Q Were you able to see him when he was in the cell?

20 A No.

21 Q What happened after your husband got there?

22 THE COURT: What you have said, does it add up
23 to the fact he came through the room you were in and he
24 went into a cell and you didn't see him any more for the
25 time being?

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THE WITNESS: Yes.

THE COURT: Okay.

Q What happened after your husband had been put in the cell?

A A few of the agents, Jeff Hall, Scotty, and Sandy, told me that I should cooperate and if I don't cooperate I am going to go to Riker's Island and things are only going to get worse for me, but if my husband and I decide or if I decide to cooperate things can only get better for us. And I wanted to speak to my husband.

Q You told them you wanted to speak to your husband?

A Yes.

Q What were you doing with respect to -- had you stopped crying at this time?

A I was a little calmer, yes.

Q Were you crying at all?

A Yes, I was. When I first came in I was hysterical crying and very upset.

Q Did you continue after you had seen your husband to cry and be hysterical?

A Yes, I was still crying.

Q And did you continue to be what you call hysterical?

A Not throughout the entire evening, no.

Q Did there come a time you were allowed to speak

1 md/lf

Friedman-Direct

2 to your husband?

3 A Yes.

4 Q By the way, did you hear your husband say anything
5 during the time that he was in the cell?

6 A Yes, I did.

7 Q What did you hear him say?

8 A He told me that I shouldn't be confused and
9 that --

10 THE COURT: Wait a moment. Did you give me the
11 physical layout? Were you in a room near enough to hear him
12 without seeing him?

13 THE WITNESS: Yes.

14 THE COURT: And you could hear what you are about
15 to say without seeing him?

16 THE WITNESS: Yes, there was a door that ever once
17 in awhile would open up, and he told me that maybe we
18 should consult an attorney, and, you know, he wanted to
19 speak to someone; he was confused and I was scared.

20 Q This is what he said to you?

21 A Yes. He yelled it to me.

22 Q He what?

23 A He would yell it to me.

24 Q He yelled it to you?

25 A Right.

1 md/lf

Friedman-Direct

14

2 Q Did he yell to you on more than one occasion,
3 do you recall?

4 A Maybe twice.

5 Q But it was to the same effect both times?

6 A Yes, that maybe we should get an attorney or
7 speak to someone because they were trying to convince me
8 to tell them their source, who was the person. They wanted
9 me to give them as much information as I could, and my
10 husband, you know, was hearing dribs and drabs of this, and
11 he thought that maybe we should consult someone. So I was
12 trying to plead with Jeff Hall to try to let me speak to
13 my husband because I just didn't want to tell them anything
14 without speaking to my husband first.

15 Q So there came a time you were allowed to speak
16 to your husband privately, is that correct?

17 A Yes.

18 Q In the course of the discussion with your husband,
19 did you agree that you would furnish the source?

20 A Yes.

21 Q And did you thereupon furnish the source?

22 A Yes.

23 Q And that was a man by the name of Jeffrey Nach,
24 is that correct?

25 A Yes.

1 md/lr

Friedman-Direct

15

2 Q At the request of the agents after you had
3 furnished them with the name of Jeffrey Nach, did you go out
4 and help the agents in the apprehension of Jeffrey Nach?

5 A Yes, I did.

6 Q You made several telephone calls at the request
7 of the agents and so forth, is that correct?

8 A Yes, I did. Yes.

9 Q And then were you permitted to go home that night?

10 A Yes.

11 Q Let's come to the next day. On the following
12 day, did you go anywhere?

13 THE COURT: The day of the arrest was the 24th?

14 MR. BLOCK: Yes.

15 Q The following day did you receive instructions
16 from the agents as to where to go?

17 A Yes.

18 Q Where were you told to go?

19 A I was to go to the courthouse in Newark.

20 Q When you got to the courthouse in Newark, did
21 you meet your husband and the agents?

22 A Yes.

23 Q Did there come a time when you were called into the
24 office of Assistant United States Attorney Flynn?

25 A Yes.

md/lr

Friedman-Direct

16

Q When you were called into his office, who was present?

A Sandy Smith and my husband.

THE COURT: What is the assistant's name?

MR. BLOCK: Flynn.

THE COURT: So you were in Flynn's office and there was you, your husband, Mr. Smith and Mr. Flynn, is that right?

THE WITNESS: Yes.

Q Can you tell us to the best of your recollection what was said in Mr. Flynn's office after you got in there?

A Mr. Flynn assured us that as long as we cooperate everything would be all right. My husband, since he is a law student, was very concerned about his law career, and Mr. Flynn assured him that he will be able to practice, that as long as you cooperate and we already took the step in the right direction by giving our source as Jeffrey Nach, he said that is really fantastic, and the more you do the better it will be for you, and he assured us and promised us that everything would be fine, and he also made a comment that we may like working on this side of the law.

He was just -- we put a lot of trust in him.

MR. BLOCK: Could this be marked?

(Defendant's Exhibit A marked for identification.)

xxx

1 md/lf
2 Q I show you what purports to be a statement signed
3 by Lawrence Friedman and purports to be signed by yourself
4 as a witness dated September 25, 1975, on the letterhead
5 of the United States Attorney's office in Newark, New Jersey,
6 and ask you if you put your signature on that piece of paper.

7 A Yes, I signed that.

8 Q And is that your husband's signature on it, too?

9 A Yes, it is.

10 Q Did your husband sign that in your presence?

11 A Yes.

12 Q Was there any discussion -- did Mr. Flynn say any-
13 thing in explaining that piece of paper to you?

14 A He said that we would be working with the agents,
15 and any arrests that we make or any cooperation that we give
16 them would help us in our case, and he assured us that every-
17 thing would be fine, that nothing would happen to us.

18 Q What did he say with particular reference to the
19 paper?

20 A Well -- I don't understand what you mean.

21 Q You were asked to sign a piece of paper, isn't
22 that correct?

23 A Yes.

24 Q Was there any explanation given as to what the
25 piece of paper meant?

md/lr

Friedman-Direct

18

1 md/lr
2 A He said that the prosecution will be deferred
3 and we will see what you are going to do for us, you know,
4 in the next six months, and we'll give it around six months
5 and we'll see how much you can help us and then --

6 THE COURT: You are going a little too fast for
7 me.

8 THE WITNESS: I am sorry.

9 THE COURT: I take it this was about a time
10 when your husband signed that paper, is that right?

11 THE WITNESS: Yes.

12 THE COURT: That he said that prosecution would
13 be deferred for six months, is that right?

14 THE WITNESS: Right.

15 THE COURT: All right. And then what?

16 THE WITNESS: And we'll see what -- how much infor
17 mation you can help us with and how much cooperation you
18 give us.

19 Q And did he say what would happen after six months?

20 A Well, he said that, you know, as long as you
21 cooperate everything will be dropped.

22 Q He did say that?

23 A Yes.

24 MR. BLOCK: I offer that piece of paper.

25 THE COURT: What does it prove?

1 md/lf

2 MR. BLOCK: I won't offer it. I withdraw the
3 offer.

4 THE COURT: It has nothing to do with the
5 promises?

6 MR. BLOCK: That's right. I will withdraw the
7 offer at this time.

8 Q Did you read over the affidavits that were sub-
9 mitted on this motion, the affidavits of Messrs. Smith
10 and Hall and Flynn?

11 A Yes, I did.

12 Q Did you observe that their accounts of what happened
13 differed from what you have been telling us here?

14 A Yes.

15 Q But notwithstanding the difference you say that
16 what happened is in accordance with the testimony you are
17 giving now, is that correct?

18 A Yes.

19 Q By the way, was there a discussion in the car
20 with Mr. Smith about your having been previously involved
21 in drug offense in New Jersey?

22 A Yes.

23 Q What was that, very briefly?

24 A It was --

25 Q Let me state it. Did you plead guilty to an

1 md/lf

2 offense of disorderly conduct in connection with a potted
3 marijuana plant?

4 A Yes.

5 Q And you acknowledged that to Mr. Smith in the
6 car?

7 A Yes.

8 THE COURT: What penalty did you receive, any?

9 THE WITNESS: It was a disorderly person.

10 THE COURT: That is what you pleaded to, but
11 was there any penalty?

12 THE WITNESS: No.

13 THE COURT: You weren't even put on probation?

14 THE WITNESS: No.

15 Q I call this statement to Mr. Hall's affidavit:
16 "Mrs. Friedman was coherent and calm from the
17 time I met her at Drug Administration Headquarters until
18 such time as she left to participate in the arrest of
19 Jeffrey Nach."

20 Is that correct?

21 A No.

22 THE COURT: I gather before you left there you
23 pulled yourself together, is that right?

24 THE WITNESS: Before I left my apartment.

25 THE COURT: Is that what he said? I thought he said

1 md/lf

2 D.E.A. Would you read that again?

3 MR. BLOCK: "Mrs. Friedman was coherent and
4 calm from the time I met her at Drug Enforcement Headquarters
5 until such time as she left my presence to participate in
6 the arrest of Jeffrey Nach."

7 THE COURT: Right. He is not talking about at
8 your apartment, he is talking about at the D.E.A. Headquarters
9 and I understood your earlier testimony to be that you pulled
10 yourself together before you left the D.E.A. Headquarters.

11 THE WITNESS: Before I left, yes.

12 MR. BLOCK: I have no further questions.

13 THE COURT: Mr. Buchwald.

14 CROSS EXAMINATION

15 BY MR. BUCHWALD:

16 Q The incident in New Jersey involving the marijuana
17 plant occurred prior to September 24, 1975?

18 A Yes.

19 Q Am I correct that you were arrested by the Nutley,
20 New Jersey police prior to September 24, 1975?

21 A That's correct.

22 Q And at that time when you were arrested by the
23 Nutley, New Jersey police were you advised of your constitu-
24 tional rights?

25 THE COURT: I don't understand that there is any

1 md/lf

2 claim here they were forced to make statements against
3 their rights.

4 MR. BUCHWALD: I believe there is a claim by
5 Mr. Friedman to that effect.

6 THE COURT: We are dealing with Mrs. Friedman.

7 Q At that time did you have a disagreement with the
8 Nutley, New Jersey police officer?

9 A At that time, September 24th?

10 Q Concerning the original incident?

11 A I don't understand your question.

12 Q Let me ask you: did you complain or did you
13 speak to Agent Smith on the night of your arrest, September
14 24, 1975, about not wanting anything to do with the Nutley,
15 New Jersey police?

16 A Oh, yes. I didn't know what was going on and I
17 wanted to know why the Nutley police were at my apartment,
18 so I asked.

19 Q Did you tell him at that time that you didn't
20 want anything to do with the Nutley, New Jersey Police Depart-
21 ment?

22 A I really don't remember. I might have. I really
23 don't remember. I did tell him --

24 Q When you were initially arrested on the evening
25 of September 24, 1975, was anyone present from the Nutley, New

1 md/lf

Friedman-Cross

23

2 Jersey Police Department?

3 A Yes.

4 Q Who was that?

5 A I forget his name.

6 Q Was he the same officer who had arrested you in
7 connection with the marijuana case?

8 A I believe so.

9 Q When you were arrested, when was the first
10 time you learned your husband had been arrested?

11 A When I got to D.E.A. headquarters.

12 Q It is your testimony, I take it, that you were
13 not told while you were in your apartment that your husband
14 had been arrested?

15 A No.

16 Q You were not told that when you were in the
17 automobile on the way to D.E.A. headquarters?18 A I might have but I don't think I was told until
19 I got to D.E.A. headquarters.20 Q Were you told that your husband had been arrested
21 before or after you saw your husband at D.E.A. Headquarters?

22 A I don't remember. I think it was before.

23 THE COURT: When she saw him he was in handcuffs.

24 A So I knew.

25 Q Did you know that before you saw him in handcuffs,

1 md/lf
2 did they tell you that he had been arrested?

3 A I think so. I think so. I don't want to say
4 definitely yes, but I think so.

5 Q When you were first arrested, were you crying?

6 A Yes.

7 Q And that was at the apartment?

8 A Yes.

9 Q How long were you at your apartment?

10 A About fifteen minutes. Twenty minutes.

11 Q Did you cry throughout the fifteen-minute period?

12 A Well, I was hysterically crying for maybe about
13 ten minutes and then for five to ten minutes I had calmed
14 down.

15 Q How long did the trip take from Nutley, New Jersey.
16 into the New York regional office?

17 A About twenty minutes.

18 Q Was that here on 57th Street in Manhattan?

19 A We just pulled into a garage.

20 Q In Manhattan?

21 A Yes. I'm not exactly sure what street it is on,
22 though.

23 Q Were you crying in the car?

24 A Yes.

25 Q The whole way, part of the way? What is your best

1 md/lf

2 recollection?

3 A Not the whole way. When I first got into the
4 car I was hysterically crying and then I calmed down and
5 then I'd think about it and then I would cry again and it
6 would be on and off.

7 Q And then you got to the New York regional office
8 of the Drug Enforcement Administration?

9 A Yes.

10 Q How long were you there altogether at the
11 regional office before you saw your husband?

12 A A couple of hours.

13 Q Was that a few hours until the time that you saw
14 your husband?

15 A No, no, it might have been maybe a half hour to
16 45 minutes until my husband walked in.

17 THE COURT: What did you mean by the couple of
18 hours, the total time you were there?

19 THE WITNESS: Right.

20 THE COURT: You were at the D.E.A. from a half
21 to three-quarters of an hour before you saw your husband?

22 THE WITNESS: Right.

23 Q Totally, you were there about three hours?

24 A Two to three hours I would say. I don't know
25 exactly but about that.

1 md/lf
2 Q And that two to three hour figure includes the
3 time during which you made phone calls to Mr. Nach?

4 A Yes.

5 Q Which were recorded telephone calls?

6 A Yes.

7 Q In the half hour to 45 minute period before
8 you saw your husband, were you crying?

9 A Yes.

10 THE COURT: Are you going to ask her again
11 was she crying continuously or spasmodically?

12 MR. BLOCK: Yes, I will ask her that, your Honor.

13 Q Were you crying continuously or spasmodically?

14 A Spasmodically.

15 Q Would you describe as best you can --

16 A I was hysterical crying and then when the agents
17 asked me questions and tried to calm me down a little bit
18 I would relax and then --

19 THE COURT: Every time they told her everything
20 was going to be all right she stopped and when she thought
21 about it again she started crying again.

22 THE WITNESS: Exactly.

23 Q Would you describe to the Court as best you could
24 really everything you recall from that 30 to 45 -- were you
25 fingerprinted?

1 md/lf

Friedman-Cross

2 A Before I saw my husband?

3 Q Yes.

4 A I think it was after I saw my husband I was finger-
5 printed.

6 Q Were you advised of your rights?

7 A Mr. Block asked me that, and I think I was
8 advised -- I don't remember exactly when. But I think I
9 was advised of my rights either in my apartment or on the
10 way to the D.E.A. I don't really remember. Honestly.

11 Q Do you recall Agent Smith, the tall blond fellow,
12 asking you questions about your personal background, how old
13 you were, your address?

14 A Yes.

15 Q When was that?

16 A When I first came in I sat -- well, a lot of
17 things are kind of blurred because it was a year ago and
18 I was upset.

19 Q I appreciate this is a difficult time for you.

20 THE COURT: I am a little confused by the area of
21 questions along this line even when Mr. Block asked them.
22 It doesn't seem to me we are dealing with the voluntariness
23 of Mrs. Friedman. She is a fact witness. She claims she was
24 there when someone made a promise, so what difference does
25 it make how much she was crying.

md/lf

Friedman-Cross

MR. BUCHWALD: If your Honor will bear with me it will become relevant.

THE COURT: Please get to it.

Q When was it this Agent Smith asked you the question about your personal background?

A When I first came into the office I was crying so I think I was like walking up and down to try to relax myself, and I sat down and he was typing out my personal history. I don't remember how many minutes the second I walked into my office.

Q Was it before you saw your husband?

A Yes. My husband walked in while he was in the middle of typing up --

Q Were you fingerprinted before or after that?

A It was after that. First time my personal history, and my husband walked in while Sandy Smith was typing it, and there was a lot of confusion because my husband was being brought to a cell, I was hysterical crying, I wanted to speak to him, I wanted to -- I mean -- and then I think after that I was fingerprinted, after I saw my husband.

Q Which came first, seeing your husband or being fingerprinted?

MR. BLOCK: I think she answered that four times.

THE COURT: She answered you she thinks it was

1 md/lf

2 after she saw him.

3 A I saw my husband and then I was fingerprinted.

4 Q There came a time you had an opportunity to
5 speak to him?

6 A Yes.

7 Q Were you fingerprinted before or after you had
8 an opportunity to speak to your husband?

9 A Before.

10 Q Did you mention Mr. Nach's name to either the
11 agents or any of the police officers who were present prior
12 to the time that you spoke with your husband?

13 A No.

14 Q Did you mention to the agents that you were
15 going to cooperate with them or wanted to cooperate with
16 them or were leaning toward cooperating with them prior
17 to the time that you spoke with your husband?

18 MR. BLOCK: I object to the form of the question.
19 There are so many considerations.

20 THE COURT: Sustained.

21 MR. BLOCK: Let him ask them separately.

22 MR. BUCHWALD: I will.

23 THE COURT: Did you say anything to the agents
24 indicating that you might cooperate before you spoke to your
25 husband?

2 THE WITNESS: Yes.

3 Q What was that?

4 A I said that I would cooperate but I would like to
5 speak to my husband before I give you the source. I
6 wasn't going to say anything until I spoke to him.

7 Q How long did you speak with your husband?

8 A About five minutes.

9 Q Was anyone else present?

10 A When we were to speak alone, no. The door
11 was ajar and Jeff Hall was standing by the door, but --

12 THE COURT: By the way, it is curious, although
13 not unheard of, for a defendant or the wife of a defendant
14 to be calling an agent or a policeman by his nickname. How
15 do you happen to call him Sandy?

16 THE WITNESS: That's what he told us --

17 THE COURT: Everybody was calling him that that
18 night?

19 THE WITNESS: Yes.

20 THE COURT: Okay. You haven't become friends since

21 THE WITNESS: No.

22 Q After you spoke with your husband -- well, could
23 you tell us what you said to your husband and what he said to
24 you during that five-minute period?

25

1 md/lf

2 A We were discussing what to do and we both
3 said that the only thing and best thing we can do to help
4 ourselves was to cooperate with them fully, and that's
5 exactly what we did. We decided on it.

6 Q And when was it in relation to that five-minute
7 discussion -- incidentally, when you were talking to your
8 husband were you crying?

9 A A little bit, yes.

10 Q But not hysterically?

11 A Not as much, no. Not as much.

12 Q And when --

13 THE COURT: Do you cry easily?

14 THE WITNESS: Very easily.

15 THE COURT: Every time you are arrested you cry?

16 THE WITNESS: Well -- I cry very easily. I am
17 very sensitive. I could cry right now if I think of it.

18 Q There was nothing funny about that evening?

19 A Not at all, no.

20 Q You didn't laugh during that evening?

21 A I laughed a couple of times toward the end.

22 Q When?

23 A At the end, when they made me feel better.

24 Q Was that after you had made the telephone calls
25 to Mr. Nach?

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A Yes.

Q And when you made those calls to Mr. Nach, what were you doing at that time, were you pretending that you were setting up a meeting with Mr. Nach?

A Yes, they told me to -- well, of course, I couldn't tell him where I was because they wanted to get him, so we planned a meeting and that was it. I couldn't tell him where I was. I told him that I was -- I believe I told him that I was at my apartment and I had to speak with him.

THE COURT: You didn't say this is Margaret -- is that your name?

THE WITNESS: Everyone calls me Meg.

THE COURT: You didn't say this is Meg Friedman calling from police headquarters?

THE WITNESS: No, I didn't say that.

Q You persuaded Mr. Nach to meet you?

A Yes.

Q Then you met with Mr. Nach?

A Yes.

Q Under the surveyance of the police officers?

A Yes.

Q And that was back again in Clifton, New Jersey, wasn't it?

2 A Yes.

3 Q And then after you and Mr. Nach met and went
4 back to -- was it your car?

5 A I believe I was in my car, right. Yes.

6 Q And then Mr. Nach was arrested?

7 A Yes.

8 Q And then you went home?

9 A Yes.

10 Q And the agents told you to show up at the U.S.
11 Attorney's office in Newark the following day?

12 A Yes.

13 Q And the following day initially in the morning
14 you got lost and went to the post office?

15 THE COURT: What's the difference?

16 Q Did you arrive after your husband arrived at
17 Newark?

18 A No, I was there before.

19 THE COURT: Can't we get to the discussion that
20 is the claim of the defendant in this case now, with the
21 United States Attorney.

22 Q Were you photographed on the evening of September
23 24, 1975?

24 A Was I photographed?

25 Q Yes.

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A Yes. I think so.

Q Was there something very particularly funny about the time that you were photographed?

A I think they were trying to make me laugh.

Q They were trying to make you laugh and they succeeded?

A I think.

Q Do you recall laughing at the time that you were photographed?

A I think so, because they were making jokes.

Q And when were you photographed in relation to the time that you were fingerprinted?

A I think first --

THE COURT: You said that sooner or later I would understand what this line of questioning was attempting to establish. I still don't.

Q Is that your photograph on the night you were arrested?

A Yes.

MR. BUCHWALD: We offer this.

THE COURT: To prove what?

MR. BUCHWALD: To prove certainly at the time of the photograph there was no hysterical crying and there will be testimony for the most part during this evening Mrs.

1 md/lf

2 Friedman was laughing and in a good mood and angry at
3 her husband.

4 THE COURT: Even if that were true, it doesn't
5 seem to me that it tells much about what happened the next
6 day.

7 MR. BUCHWALD: I agree, and as I understood part
8 of Mr. Block's claim, and I think he intended to put Mr.
9 Friedman on next, part of the claim of the defense as I
10 understood it from the papers, and I have gotten into this
11 late and I apologize to the Court, and I don't want to
12 claim complete expertise on what has proceeded was that
13 Mr. Friedman was induced to cooperate in part by the empathy
14 he felt for his distraught wife on the evening of September
15 24th.

16 THE COURT: On that point I will accept the
17 picture.

18 MR. BLOCK: I have no objection.

19 (Government exhibit received in evidence.)

20 THE COURT: Were you under the influence of any-
21 thing at the time?

22 THE WITNESS: No.

23 THE COURT: Do you remember how you happened to
24 be laughing when they were taking a mug shot of you? It is
25 somewhat unusual.

xx

1 md/lf
2 THE WITNESS: Yes. They were telling me -- they
3 were just telling me that I was pretty, and how could a
4 pretty girl cry, and, you know, stop crying, you know, look
5 at yourself, you are getting a mug shot, you have to be laughing.
6 And Sandy Smith was making jokes when he was fingerprinting me
7 and made a couple of jokes about being a homosexual or some-
8 thing like that. That doesn't have any relevance to any-
9 thing, but they were just joking around. And you know I
10 think a lot of times when people are sad, they experience
11 sad events, there has to be a little bit of a briefness
12 where, you know, they have to laugh a little bit and, you
13 know, they were really trying -- they saw how upset I was
14 and they were really trying to make me laugh. They succeeded.

15 THE COURT: Okay.

16 Q Let me direct your attention to the morning of
17 September 25, 1975, Mrs. Friedman. As of this time you had
18 been married for how long to Mr. Friedman, as of September
19 25, 1975?

20 A A couple of weeks.

21 THE COURT: May I ask whether you had lived together
22 before that? The only reason I ask is because so many
23 people do these days. It is a little different if you lived
24 together three years and been married two weeks and if you
25 had been just married three weeks.

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THE WITNESS: For about a month.

THE COURT: You had been roommates for about six weeks.

THE WITNESS: Yes.

MR. BLCOK? After Carter's interview in Playboy I am not arising to object to that on constitutional grounds, your Honor.

Q If I could just back up for one moment before we get to the 25th in Mr. Flint's office on the evening of the 24th when you were with your husband for that five-minute period and Mr. Hall was a few steps away, did you tell your husband at any point that no matter what he did you were going to cooperate?

A I might have said that.

Q Did you tell your husband that you thought he ought to cooperate?

A Oh, yes. I was also very scared because of the threats. I didn't want to go to Riker's Island. I was afraid. And I was confused.

Q On the morning of the 25th, I gather there came a time when you drove to the Newark District Attorney's office

A Yes.

Q When you arrived at the U.S. Attorney's office, where did you go, when you arrived at the building in Newark?

1 md/lf
2 A Well, there are two buildings right next to one
3 another, and there was a confusion as to where they were
4 going to meet. I thought they were supposed to meet in --
5 I think, I believe, in the court, and then it was switched
6 around several times, so I was there about two or three hours
7 before everyone else arrived, and I was waiting for them.

8 Q Excuse me, did you say you got there before or
9 after everybody arrived?

10 A No, I was there two or three hours before.

11 Q Did you see your husband when he arrived?

12 A Yes.

13 THE COURT: What building was this in now,
14 if you know?

15 THE WITNESS: It wasn't --

16 THE COURT: I can't imagine there is any dispute.
17 Do you know what building they met in?

18 MR. BUCHWALD: I am not really familiar with the
19 premises.

20 THE COURT: The building the United States
21 Attorney's offices were in?

22 THE WITNESS: Yes, that's where they came.

23 Q When you first saw your husband on the morning
24 of the 25th, were you able to speak with him immediately?

25 A I think so. I mean -- yes, I think so.

1 md/lf
2 Q Did your husband indicate to you whether or not
3 at that time he had already seen the United States Attorney
4 and Assistant United States Attorney?

5 A Did he say anything that he saw him?

6 Q Yes.

7 A No.

8 Q Did you know --

9 A I don't think we came -- I don't know if he
10 came there to see him. I thought -- I think that we were
11 supposed to go to court or have a hearing. You know, no
12 one was really too sure of what was going on.

13 Q Did you know whether or not at the time you
14 first saw your husband on the morning of September 25th,
15 whether or not he had already seen an Assistant United
16 States Attorney?

17 A Did I -- no.

18 Q You did not?

19 A I knew that he didn't. I knew that he didn't
20 see anyone, because I was waiting for them.

21 THE COURT: You don't know what he did between
22 nine and eleven in the morning, did you?

23 THE WITNESS: No, but I knew they were in
24 Manhattan, and they were on their way to Jersey.

25 THE COURT: Or you thought they were.

2 THE WITNESS: Yes, I thought they were.

3 Q Did you see what happened to him after he arrived,
4 your husband?

5 A After he arrived? Well, we all were sitting on
6 this bench in the building, in the hall, Sandy Smith,
7 Scotty, Jeff Nach, and my husband, and we were waiting to
8 speak with the District Attorney.

9 Q And who went in first to speak with the Assistant
10 United States Attorney?

11 A I think either Scotty or Sandy Smith.

12 Q Did an agent stay outside with you and your
13 husband?

14 A There was always an agent there. And also Mr.
15 Pollini was there, also.

16 Is he a New York City police officer?

17 A Yes. He was there, also. I really didn't --
18 at this point I really didn't know what was going on because
19 I thought we were supposed to go in front of the magistrate,
20 you know, so I was there, I was confused, I think we were
21 all confused at this point.

22 THE COURT: How did you know about going in front
23 of a magistrate, the process?

24 THE WITNESS: I think that's what the agents
25 told us the night before. That's why we were going to Newark.

1 md/lf
2 Q Do you recall whether it was you or your husband
3 or Mr. Nach who first went in to see the United States Attorney
4 was first brought in to see the Assistant United States
5 Attorney?

6 A I think it was my husband first. I could be
7 wrong but I think it was him first.

8 Q Did you go in with your husband?

9 A No, he went in alone.

10 Q Do you recall how long it was before he came out?

11 A About a half hour, maybe forty minutes.

12 Q And then what, if anything, happened?

13 A I think he went out, came out, and then I think
14 Jeff Nach went in there for a little while, and then Jeff
15 Nach came out, and then my husband went back in there, and
16 then I believe they called for me to come in.

17 Q When you went in, was it to Mr. Flynn's office?

18 A Yes.

19 Q Who was present in the office?

20 A Mr. Flynn, my husband, and Sandy Smith.

21 Q Was there a time when you spoke to Mr. Flynn
22 when your husband was not present in the office?

23 A No.

24 Q When you went into Mr. Flynn's office, what
25 happened? What was the first thing said to you after you were

1 md/lf
2 brought into Mr. Flynn's office?

3 A The first thing that was said to me?

4 Q Yes, or the first thing anybody said once you
5 went into the office.

6 A I really don't remember. I think they were
7 discussing what was going to happen to us and if we were
8 going to cooperate and we already did begin to cooperate
9 because we got the first source, Jeffrey Nach, so Mr. Flynn
10 was just assuring us. There is nothing specific I can
11 remember him saying to me.

12 Q Did you tell him that you were a school teacher?

13 A I think it came up in the conversation. I don't
14 know if he asked me or if I just told him.

15 Q Did there come a time in the conversation when
16 your husband mentioned that he was a law student?

17 A Oh, yes, yes.

18 Q Do you know whether or not your husband had
19 mentioned that prior to the time that you were in the office
20 with Mr. Flynn?

21 MR. BLOCK: How could she know that? Objection.

22 THE COURT: She could know it, I guess, or could have
23 heard it as Mr. Flynn talked about his being a law student
24 at the time she entered the room. In other words, did he
25 talk about your husband being a law student before there
was any other discussion on the subject? Did Mr. Flynn?

1 md/lf
2 THE WITNESS: That's not the first thing he said,
3 no.

4 THE COURT: But did he talk about it before
5 your husband said that he was?

6 THE WITNESS: No. My husband said that he was
7 a law student and -- I wasn't in the room at the time.

8 THE COURT: Then how do you know he said it?

9 THE WITNESS: I know now because it is in the
10 affidavit and also because during the months that my husband
11 and I discussed it --

12 THE COURT: All right, let's get to what you do
13 know. You came into the room with Mr. Flynn, and so forth.
14 When was the first time while you were present did the
15 subject of your husband's being a law student come up?

16 THE WITNESS: I don't know exactly when. We were
17 just in general talking about our cooperation and my husband
18 was very concerned about his law career and --

19 THE COURT: Do you remember what he said, if you
20 can't put it in exact words?

21 THE WITNESS: Will I be able to practice, what's
22 going to happen to me? Mr. Flynn said that as long as you
23 are cooperating and I see that you are everything is going
24 to be fine, you will be able to practice, and my husband
25 was most concerned about that. We wanted to know what was

1 md/lf

2 going to happen to us.

3 THE COURT: Right.

4 THE WITNESS: And he just said as long as you
5 cooperate everything will be fine. And he promised us
6 that everything was going to be fine.

7 THE COURT: You mean he used the word promise
8 or what? Did he say, "I assure you, don't worry"?

9 THE WITNESS: He assured us. I don't think he
10 used the word promise. He said, "I assure you, trust me."
11 I believe he said, "I am not a liar." In fact, we both did
12 trust him very much.

13 Q Did your husband ever use the word "guarantee"
14 during the discussion while you were present?

15 A He might have.

16 Q Did your husband say in words or substance, "Can
17 you give us a guarantee?"

18 A I don't think he said it that way. He might
19 have said, "I know you can't guarantee me anything but," you
20 know, "what do you think is going to happen?"

21 Q And what did Mr. Flynn say then?

22 A Mr. Flynn said that you will be able to practice,
23 everything will be all right, you are going to learn a lot
24 working on this side of the law. Go home, get a good
25 night's sleep, you will speak to the agents on Monday, and

1 md/lf

Friedman-Cross

2 just don't worry. You did the right thing.

3 THE COURT: Let's take a recess.

4 (In the Robing Room)

5 THE COURT: I note on the record the hearing
6 has been moved from the courtroom into the robing room
7 because of the coming into the courtroom of a newspaper
8 reporter. This is with your approval, I understand, Mr.
9 Friedman?

10 MR. FRIEDMAN: That a reporter shouldn't be here?

11 THE COURT: Yes. I came into the robing room
12 because I understand you want to have these proceedings
13 held privately, is that correct? You have a right to have
14 this held in open court, and you are willing to have it
15 held in the robing room?

16 MR. FRIEDMAN: Yes, your Honor.

17 BY MR. BUCHWALD:

18 Q Was there anything further Mr. Flynn said?

19 A He said we did the right thing by contacting the
20 source, by telling them the source.

21 Q Did there come a time when your husband said
22 that he knew other dealers who he was willing to tell the
23 police about and help make cases against?

24 A Yes.

25 Q And that was while you were present?

1 md/lf

2 A Yes. Well, they asked us what we can do. The
3 agents had asked us, you know, do we know anyone, what
4 could we do, the more people you know the better it is.

5 Q And your husband said that he did know people
6 and could help and assist in making other cases against
7 them?

8 A Yes.

9 MR. BLOCK: Can you fix the time of that?

10 Was this while you were in the office with Mr.
11 Flynn?

12 A We were going back and forth. There was a bench
13 outside the office, and the agents, Sandy, Scotty, Larry,
14 Jeffrey, and myself, were sitting outside, and --

15 THE COURT: Larry is your husband?

16 THE WITNESS: Yes.

17 THE COURT: And Jeffrey is Nach?

18 THE WITNESS: Yes.

19 THE COURT: All right.

20 A And there were conversations I think maybe
21 between Sandy and Larry. You know, Sandy was saying,
22 or Scotty was saying, "As much as you can cooperate
23 with us, you know, it is better for you."

24 I don't think this was discussed inside Flynn's
25 office is what I am trying to say. It could have been but

1 md/lf

2 I really don't remember.

3 THE COURT: It was either his office or the
4 hall?

5 THE WITNESS: Right. Exactly.

6 Q Did there come a time after these discussions
7 when your husband continued to ask Mr. Flynn if anyone
8 could guarantee that there would be no prosecution provided
9 that he cooperated?

10 MR. BLOCK: I think that was covered.

11 THE COURT: I thought we had been through that
12 when she said; "I know you can't guarantee, but what way do
13 you think things will go." Was there any further discussion
14 about guarantees?

15 THE WITNESS: My husband and so did I ask him
16 as long as we cooperate what's going to happen with our
17 lives. My husband especially wanted to know what was
18 happening with his law career. That was his concern.

19 Q Did there come a time during those discussions
20 when you turned to your husband and you told him to shut
21 up, this was the best deal that you were going to get?

22 I didn't say shut up. I said be quiet, because
23 Mr. Flynn came across as everything is going to be all right;
24 as long as we cooperate I assure you that everything is
25 going to be fine. Larry will be able to practice law, and

1 md/lf

Friedman-Cross

2 everything will be okay. So at that point, I mean, I
3 felt good. I felt as if I really trusted Mr. Flynn and
4 everything he said was true and as long as we cooperate
5 to the best of our ability which we did, everything would be
6 fine, and I was relieved, and told my husband relax, be
7 quiet, because he was very nervous, uptight and scared.

8 Q I appreciate all of what you just said. Did you
9 tell your husband be quiet?

10 A Yes.

11 Q "This is the best we are going to get"?

12 A I don't know if I said this is the best we're
13 going to get, but I said be quiet. Or this is good, or
14 something.

15 Q Did you say something to the words or effect, "This
16 is the best we're going to get"?

17 A I honestly don't remember.

18 THE COURT: Would I be correct in assuming the
19 conversation may have gone something like this, that
20 you kept pressing Mr. Flynn to see how much assurance you
21 were going to get and at the point you realized that the
22 best you could hope for Mr. Flynn to say was if you
23 cooperated everything would be all right, your husband kept
24 asking questions because he was anxious and you told him to
25 keep quiet, that you had learned in effect all that there was

1 md/lf
2 to learn?

3 THE WITNESS: Yes.

4 THE COURT: You never assumed, did you, that Mr.
5 Flynn could guarantee that there would be no --

6 THE WITNESS: I never thought that he could
7 guarantee it in writing. I knew that. But the way he spoke
8 I felt enough trust in him, and I believed him.

9 Q That what?

10 A Excuse me?

11 Q You felt enough trust and believed what?

12 A That as long as we cooperate everything is going
13 to be all right.

14 Q Did he tell you that he wasn't going to -- well,
15 did he offer to not arraign you? Did he tell you, "We don't
16 have to go to court, we don't have to go to the magistrate"?

17 A Yes. Yes.

18 Q Was that at your request because you didn't want
19 your school or your husband's law school to know about the
20 fact of the arrest?

21 A I really don't know if it was our request
22 or -- I think it was he, I think it was Mr. Flynn who said
23 that, and I believe it was a conversation between my husband
24 and Mr. Flynn when I wasn't present.

25 THE COURT: Then you don't know. You just know

1 he didn't say it in your presence, is that right?

2 THE WITNESS: Right.

3 Q Incidentally, Exhibit A, which Mr. Block showed
4 you --

5 MR. BLOCK: It is not in evidence.

6 MR. BUCHWALD: I understand that.

7 Q There was also Exhibit B, or another piece of
8 paper which you signed and your husband witnessed to the
9 same effect, is that right?

10 A Yes.

11 Q In other words, it was an identical piece of
12 paper in all other respects?

13 A Yes.

14 Q And at the time you signed Defendant's Exhibit
15 A for identification, did you read it?

16 A Yes.

17 Q Did you understand it?

18 A Yes.

19 Q And did you talk to your husband about it?

20 A Yes. For a year. Over a year.

21 THE COURT: A year tomorrow.

22 THE WITNESS: Yes.

23 Q Did you understand as you signed it that it was
24 still possible that your husband would be prosecuted?
25

md/lf

Friedman-Cross

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1 A It said deferred prosecution. I don't understand
2
3 it totally, but I understand that I -- I guess he could but
4 I don't know.

5 THE COURT: How much education have you had? If
6 you are a teacher I assumed you graduated from college.

7 THE WITNESS: Yes.

8 THE COURT: What did you major in?

9 THE WITNESS: Elementary education.

10 *THE COURT: You know deferred prosecution means
11 that the question is put off, and you said he himself said
12 deferred for six months, and then you reviewed the bidding,
13 so to speak?

14 THE WITNESS: Right.

15 Q In fact, wasn't the discussion with Mr. Flynn
16 that Mr. Flynn told you that he would consider whether or
17 not to place your husband in a deferred prosecution program,
18 and not that he was placing your husband in a deferred
19 prosecution program?

20 A I don't know. He gave us these pieces -- if that's
21 what these pieces of paper said I guess so, that's what it
22 was. We didn't have to go to the magistrate, so he was
23 seeing how we would act in the next few months, and see how
24 much cooperation we would give to the agents.

25 Q Wasn't it your understanding that this was being

1 md/lf
2 done, that extra time was being bought for Mr. Flynn to
3 consider whether or not to place your husband in a deferred
4 prosecution program in lieu of arraigning your husband then
5 and there because of the impact that an arraignment would
6 have at his law school?

7 A Yes, I guess so.

8 Q Did there not come a time during that discussion
9 when your husband continued to bring up the subject of
10 guarantees when Mr. Flynn said that if you wanted he would
11 arraign you and would bring you right over to the magistrate
12 at that time that that was your desire?

13 A I don't remember him saying that.

14 Q But he may have said it?

15 A I mean that's what was to happen that day. Like
16 I said, my husband was in with Mr. Flynn for maybe forty
17 minutes they had a conversation, and when I came in it
18 seemed as though everything was settled and there was a
19 decision already made, so when I walked into the room Mr.
20 Flynn was just assuring us that everything was going to be
21 okay, and we were to sign these papers.

22 THE COURT: Since so much reference has been
23 made to Exhibit A, and I gather its identical twin was
24 signed by the witness, so why don't you offer it so I know
25 what you are talking about?

1 md/lf

2 MR. BUCHWALD: I will offer it.

3 MR. BLOCK: No objection.

xxxx 4 (Defendant's Exhibit A received in evidence.)

5 MR. BLOCK: It is attached to the motion papers,
6 your Honor.

7 Q You understood that today if you wanted --

8 THE COURT: Excuse me a moment, Mr. Buchwald.

9 MR. BUCHWALD: I am sorry.

10 THE COURT: Go ahead.

11 Q You understood that morning of September 25th
12 that if you wanted to Mr. Flynn would have brought you
13 in front of the magistrate?

14 A If he wanted to?

15 Q If that was the course of action you expressed to
16 him he would have done that?

17 A I would think so.

18 Q You understood that at the time?

19 A Yes.

20 Q On September 25, 1975, during the period of time
when you were present with Mr. Flynn and your husband together
was there any discussion by you or your husband and Mr.
23 Flynn about your husband having previously been involved in
24 sales of pills in New York City other than this occasion the
25 night before?

1 md/lf

2 A I think so.

3 C Which agent as best you recall said something
4 to you on a previous night about going to Riker's Island
5 as a young girl, that was not something you would want to
6 do?

7 A Scotty and I think Jeff Hall said something,
8 but I know for sure that Scotty did.

9 Q In the affidavit there is a reference to some-
10 thing about lesbians. Was that term used?

11 A I don't know if the word lesbian was used,
12 but they referred to me being scared and frightened and
13 they made references to what goes on in Riker's Island.

14 MR. BLOCK: For the record, your Honor, the
15 affidavit he is referring to is Mr. Friedman's affidavit,
16 not the witness' affidavit.

17 THE COURT: How would Mr. Friedman be able to
18 testify to what they were saying to her. Was he present?

19 MR. BLOCK: No, because this was what was said
20 to him.

21 THE COURT: That's not the question being asked.
22 The question being asked is what was said to Mrs. Friedman
23 about her going to Riker's Island.

24 MR. BLOCK: But there was an allusion to an
25 affidavit in the question.

1 md/lf
2 THE COURT: Were you referring to Mr. Friedman's
3 affidavit?

4 MR. BUCHWALD: I was bringing up the subject.
5 There was a reference in Mr. Friedman's affidavit quoting
6 something said to his wife and I was trying to find out
7 what was said.

8 THE COURT: I don't care if it's in his affidavit
9 or not, the question is what actually happened.

10 Q What has happened to the charges against you
11 in New Jersey?

12 A In New Jersey?

13 Q Yes. You were arrested that night, weren't you,
14 September 24th?

15 A By the federal agents.

16 Q That's right. Have you ever been indicted in New
17 Jersey?

18 A Well, just for that marijuana thing.

19 THE COURT: No, what happened to the charges
20 for which you were arrested the night we are talking about.

21 THE WITNESS: Nothing happened.

22 Q There has been no case against you, either in
23 New Jersey or in New York?

24 A No.

25 THE COURT: Did you ever get to spend the night at

1 md/lf

2 Riker's Island?

3 THE WITNESS: No.

4 Q Did you ever ask the agents to call an attorney
5 the night of September 24th?

6 A Did I ever?

7 Q Yes.

8 A No.

9 Q Did they ever indicate to you in any way that
10 you couldn't call an attorney?

11 A That I couldn't? No, he never said that I
12 couldn't. They never said I could and they never said I
13 couldn't.

14 Q They never at any time told you that you could?

15 A No, they never said anything about an attorney.

16 Q Is that something you are sure of or is that
17 something you just don't recall one way or another?

18 THE COURT: Again I don't understand that is a
19 part of any of the claims here.

20 MR. BLOCK: That's right. It has nothing to do
21 with it.

22 A I don't remember. They might have said to me --

23 THE COURT: It's not important. Never mind.

24 MR. BUCHWALD: I have no further questions of
25 this witness.

1 md/lf

2 MR. BLOCK: I have a little redirect.

3 REDIRECT EXAMINATION

4 BY MR. BLOCK:

5 Q You were asked about your conversation with your
6 husband when you were alone together at D.E.A. headquarters.
7 Was anything said in that conversation about Riker's Island
8 in your conversation with your husband?

9 A I think so. I think so.

10 Q Do you recall?

11 A Yes, yes.

12 Q Do you want to tell us what was said in that
13 connection?

14 A You know, I just told my husband that I was
15 really scared, I didn't want to go to jail, and I knew that
16 it couldn't be any worse off than it is now, so you know we
17 might as well help them and wanted to help them, and I was
18 scared also of going to jail. I didn't want to.

19 Q You didn't want to go to Riker's Island?

20 A No, no.

21 Q Now, you testified that you did tell your husband
22 in that private conversation that you would cooperate even
23 if he didn't want to.

24 A Yes.

25 Q Did you tell him that?

1 md/lf

2 A Yes.

3 Q Did you mean it when you said it?

4 A No.

5 Q You did not?

6 A No.

7 Q Are you saying that if your husband said it is
8 our position --

9 THE COURT: I don't understand what this has to do
10 with it either. They are talking to each other and so
11 forth. What's the difference? What you are complaining of
12 is the fact a promise wasn't kept or pressure was applied
13 to Mr. Friedman. Mrs. Friedman didn't apply it, or she is
14 not charged with applying it.

15 Q It goes without saying you are not a lawyer,
16 is that right?

17 A Right.

18 Q Now, you do know that after this business in
19 September of 1975 that there came a time when your husband
20 was indicted in Brooklyn for the sale of drugs. That's
21 what the lawyer was asking you about, any discussion in
22 Flynn's office about something that happened in New York
23 City. And you also know that your husband was subsequently
24 indicted in this court in the Southern District court, isn't
25 that right?

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A Yes.

Q Did you feel that that violated the promises which had been made and the assurances that had been given to you by Mr. Flynn?

A Yes.

MR. BLOCK: I have no further questions.

THE COURT: Let's see if the gentleman has left. If he has, let's lock the doors, because this is a little too close for a permanent basis.

(After recess)

LAWRENCE FRIEDMAN, called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLOCK:

Q Mr. Friedman, you are the defendant in this case, is that correct?

A Yes, sir.

Q You are the husband of Margaret Friedman who just got off the witness stand?

A Yes, sir.

Q And you were present in court and heard the testimony that she gave?

A Yes, sir.

1 md/lf
2 Q Are you in accord with the testimony she gave
3 with respect to the events involving you when she said
4 you were present?

5 A Most parts, sir.

6 THE COURT: Tell us anything you remember different

7 Q What do you remember differently?

8 A Well, when we were in -- in our private conversatio
9 we decided that we were going to reveal our source, we
10 said so together, not alone.

11 THE COURT: You both said it at the same time?

12 THE WITNESS: Yes, your Honor.

13 THE COURT: You both told who Nach was, is that
14 what you mean?

15 THE WITNESS: Yes.

16 Q When you said it, to whom did you say it?

17 A I believe Mr. Hall was in the room, and this
18 fellow Smith, or this fellow Scotty.

19 Q Anything else you remember differently from what
20 your wife testified to?

21 A Other than asked my wife how come we are on a
22 first name basis with these agents.

23 Q That's been explained.

24 A Well, they introduced --

25 Q I know, that's been explained.

1 md/lf

Friedman-Direct

2 Anything else that you remember differently?
3 How about anything that happened in Flynn's office while
4 both of you were in there?

5 A Well --

6 THE COURT: While you were both there. We will
7 question you separately about while you were there alone.

8 A The issue of law school had already been brought
9 up by myself. When my wife came in Mr. Flynn was already
10 aware of the fact that I was an attending law student. As
11 my testimony goes on --

12 Q I am not talking now about when you were there.
13 Just listen to my question.

14 A Yes, sir.

15 Q I am not talking about when you were there alone.
16 I will come to that. I am talking now about what your
17 wife said happened when the two of you were present in
18 Flynn's office together. You heard her testimony about
19 what was said?

20 A Yes.

21 Q Is there anything she said with respect to what
22 happened while you were both there that you differ with?

23 A No, sir. There are things I have to add.

24 Q All right. We will come to that.

25 A Yes, sir.

1 md/lr
2 Q Tell me this. How old are you?

3 A I was 27 at the time. I am 28 now.

4 Q Did you have an occupation in September of 1975?

5 A Yes, sir. I was a regularly appointed tenure
6 teacher for the City of New York school system, regrettably
7 laid off September, I think it was, 16th due to budget cuts.

8 THE COURT: What did you teach?

9 THE WITNESS: Elementary -- it was called common
10 branches, which is really one through eight. I was
11 teaching sixth grade at the time.

12 Q So as of the date of your arrest September 24,
13 1975, you had been laid off from the city school system?

14 A That's correct.

15 Q Were you working in any other school system
16 at the time?

17 A No, sir.

18 Q Did there come a time when you did work in some
19 other school system?

20 A Yes.

21 Q When?

22 A Around February, the latter part of January, I
23 think it was.

24 THE COURT: Of this year?

25 THE WITNESS: Of 1976. I realized that I could tea

1 md/lr

Friedman-Direct

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2 Q Don't tell us what you realized. Did you get a
3 job?

4 A Yes.

5 Q Where?

6 A I was a student teacher in the City of Newark,
7 New Jersey.

8 Q Then did there come a time you were rehired by
9 the New York City Board of Education?

10 A Yes, sir.

11 Q When was that?

12 A The last days of May I received a letter stating
13 I was reappointed into District 6 in Manhattan, and I went --

14 Q Starting when?

15 A Starting June 1st. I worked in Public School 28
16 teaching a fifth grade class through -- right out to the
17 end of the year, and then I was told that I was excessed, which
18 means that you are not laid off but there is no room in the
19 school for you and you are excessed back to the district
20 office, they will reassign you to another school.

21 Q At the opening of the fall term this year, were
22 you rehired?

23 A I was never laid off.

24 THE COURT: Anyway, are you working in the school
25 system again? Some other time I will find out what's happened

1 md/lr Friedman-Direct 6-
2 to you every day of your life but what are you doing now?

3 THE WITNESS: I was rehired -- I was assigned
4 to Public School 153 --

5 THE COURT: Are you working there now?

6 THE WITNESS: I was laid off day before yesterday.

7 Q So you had about a week of school?

8 A Ten days. Due to budget cuts I was laid off
9 again.

10 Q Directing your attention to September of 1975,
11 were you attending any institution of learning?

12 A I had just completed my equivalency Master's Degree
13 at Brooklyn College, and then I had started Seeton Hall Law
14 School in the early part of September, my first year.

15 Q As of September 24, 1975, you were a first-year
16 law school student, is that correct, everything just started?

17 A Yes, sir.

18 Q By the way, what other education have you had?

19 A I received a high school diploma, a B.A. in
20 psychology, and an equivalency Master's Degree in educational
21 psychology, and now I was in law school.

22 THE COURT: Where did you go to college?

23 THE WITNESS: Long Island University.

24 Q Where did you get your Master's?

25 A Brooklyn College.

1 md/lf

2 Q Let's get down to September 24, 1975. You had
3 made a sale of some drugs to a New York City police officer
4 working undercover named Pollini, is that correct?

5 A Yes, sir.

6 Q Were you arrested at the time of the sale?

7 A Officer Pollini --

8 Q Just answer the question.

9 A Yes.

10 Q You were?

11 A Yes.

12 Q Tell us what happened as briefly as you can in
13 connection with the arrest.

14 A All right.

15 Q How many people there were, what happened.

16 A All right. Everything happened very, very quickly.
17 I was in a total state of confusion because first Pollini
18 said you are under arrest and put a gun to my head, then he
19 started waving his arm calling in other people, and all of a
20 sudden there were federal agents, a fellow from the Nutley
21 police, city policemen, a whole slough of people. I was hand-
22 cuffed with my hands behind my back, and I was immediately
23 being yelled at, who, where did you get your -- who is your
24 contact, who is your source, does he live on this block,
25 does he live to the left, does he live to the right, is he in

1 md/lf

2 the next block --

3 Q Let me stop you. There were a series of questions
4 by a lot of officers, is that correct?

5 A Yes, sir.

6 THE COURT: Did you give any answers at the time?

7 THE WITNESS: I asked to speak -- I told them I
8 wanted to speak to an attorney and I wouldn't reveal the
9 source.

10 Q Did the questioning continue?

11 A Yes. It did not stop.

12 Q How long did it go on right at the scene where
13 you were arrested? That was on the street in where, Clifton
14 or Nutley?

15 A Clifton.

16 Q The scene is a street corner in Clifton?

17 A Correct.

18 Q How long did the questioning go on on the street
19 corner in Clifton?

20 A About a half hour to an hour.

21 THE COURT: May I ask a question? What time of
22 day was this?

23 THE WITNESS: This was in the evening.

24 THE COURT: What time?

25 THE WITNESS: Around eight o'clock.

1 md/lf

Friedman-Direct

2 THE COURT: Was it dark or not?

3 THE WITNESS: I think it was dark, your Honor.

4 THE COURT: What part of town?

5 THE WITNESS: Residential.

6 Q Were you warned of your -- by the way, you are
7 familiar with Miranda warnings, isn't that right?

8 A Yes, sir.

9 Q Your constitutional rights. Were you told of your
10 constitutional rights at any time during this period of ques-
11 tioning?

12 A Not once.

13 THE COURT: I don't see it makes any difference
14 because he said he wouldn't answer and he didn't answer.

15 MR. BLOCK: All right.

16 Q Now then, the questioning continued and you
17 still refused to say anything, you asked for an attorney, is
18 that correct?

19 A Correct.

20 Q Were you then placed in an automobile?

21 A Well, before that I was told that at this time
22 there were some policemen, some federal agents, on the way
23 to pick up my wife, and she was being arrested, and I kept
24 saying for what, and they really were very vague and wouldn't
25 give me any answers. Then I was told that --

1 md/lf
2 THE COURT: Didn't you know?

3 THE WITNESS: Well, I really didn't know what
4 participation she had at this point, your Honor.

5 Q Go ahead?

6 A I was told that if I don't divulge my source my
7 wife will spend the night at Riker's Island where there
8 would be lesbians and she could be raped and what kind of
9 place is this, what kind of man are you, if I was in your
10 place I certainly wouldn't let that happen to my wife.
11 Would you let that happen to your wife? And I was berated
12 and berated and berated about my wife spending the night at
13 Riker's Island and it put me in an inference I'd state the
14 way they were explaining it and like I had no choice, either
15 speak or your wife goes to Riker's.

16 Q And can you recall who it was who told you about
17 your wife going to Riker's and the horrors there?

18 A Well --

19 Q We are now still at the scene?

20 A Yes.

21 Q And who was it, do you recall? If you don't re-
22 call, say so.

23 A About four different people told me that.

24 Q Then did there come a time when you were placed
25 in an automobile?

1 md/lf

2 A Yes, sir.

3 C How long were you in the automobile before the
4 automobile took off?

5 A I would say anywhere between fifteen minutes and
6 a half hour.

7 Q And was there any questioning of you while you
8 were in the automobile?

9 A Yes, sir.

10 Q Who did the questioning?

11 A A New York City policeman -- just want to ask --
12 do you mean when the car was moving?

13 Q No, this is while you are sitting there.

14 A Every once in awhile, by that I mean about every
15 minute or so, two minutes, someone would come into the car.
16 I was there like by myself and there was a whole scene
17 where all the other cars had officers arguing about some-
18 thing, I don't know what, and someone would come over and
19 say your wife is going to spend a night at Riker's, what
20 kind of person are you, who did it, who did it.

21 Q You mean a repetition of the same thing?

22 A Yes, screaming, three people at once, one
23 person alone.

24 Q The car then takes off and takes you to D.E.A.
25 headquarters, isn't that right?

1 md/lf Friedman-Direct

2 A Yes, sir.

3 Q Are you in handcuffs?

4 A Yes, sir.

5 Q All this time?

6 A Yes, sir.

7 C Is there any conversation in the car with respect
8 to continued questioning?

9 A Yes, sir.

10 Q Who does it? Who rides in the car with you?

11 A To my left was Officer Pollini, I believe there
12 was someone on my right, I don't know who, but Mr. Hall
13 was in the front seat if I recollect correctly. Mr. Hall
14 kept, you know, telling me in very acidic tones to tell them
15 who my source was. I told them that I was in law school
16 at this time. I said I go to law school, I don't know what
17 to do, I want to, you know, I want to speak to an attorney.
18 I feel like my life is going down the drain. And then they
19 disregarded that and just kept asking me who my source
20 was and I said I wanted to speak to an attorney and they
21 told me to shut up.

22 Q Then you got to D.E.A. headquarters, correct?

23 A Correct.

24 Q When you got to D.E.A. headquarters, you were
25 taken upstairs and did you see your wife?

1 md/lf
2 A When I walked in she was in the back of the
3 room being -- it looked like she was being questioned, and
4 I noticed she was hysterically crying. Her eyes were all
5 red, her nose was red, tears were pouring down her cheeks.

6 Q So you sort of got a brief look at her as you
7 were walking past?

8 A Yes, the physical construction of the room is
9 like I walked in --

10 Q That's all right.

11 THE COURT: I have enough imagination to
12 picture it.

13 Q You got a brief look at her and then you were
14 put in a cell, is that right?

15 A In a detaining cell, yes, sir.

16 Q What happened when you were in the detention
17 cell?

18 A I believe they asked me again will I --

19 Q Who is "they"?

20 A Mr. Hall, Scotty, a short fellow with like a
21 butch blond haircut --

22 THE COURT: Is that a third person or are you
23 describing any of the others? Is the short person a third
24 person besides Hall and Scotty?

25 THE WITNESS: No, Scotty is the small person.

1 md/lf

Friedman-Direct

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2 Smith is the bigger fellow.

3 THE COURT: So there was Hall and Scotty. Anybody
4 else?5 THE WITNESS: Yes, Smith was there. I don't
6 know if Smith was there exactly at this time. I think he
7 was with my wife at the time.8 Q Let me ask you this. Was there any time after
9 you got to D.E.A. headquarters that you were told of your
10 constitutional rights?

11 A Yes.

12 Q Who told you?

13 A Scotty.

14 Q At what point?

15 A After I was threatened if I don't speak my law
16 school is going to be called.

17 Q Who said that?

18 A Mr. Hall.

19 Q Mr. Hall made that threat?

20 A Definitely. Then Scotty read me my rights.
21 I was in my cell --

22 THE COURT: That's an interesting sequence.

23 A He took out like a thing from his wallet and
24 went down the list.

25 Q And then after you had been read your rights, did

1 md/lf

2 anybody continue questioning you?

3 A I think I was switched from one cell to another
4 where I was closer to the door that led into that questioning
5 room where my wife was, if I remember correctly.

6 Q You are not answering my question. I asked you
7 after your rights were read to you did anybody attempt to
8 question you again?

9 A Oh, yes.

10 Who?

11 A Mr. Hall, Scotty, and I believe at this time Mr.
12 Smith.

13 Q What did you say in response to the questions?

14 A I told them I was a law student and I was
15 threatened about my law school being called, and I told
16 them I was afraid to say anything. They kept saying, "If
17 you tell us, if you cooperate," and it was the first time
18 I heard the word cooperation -- "If you cooperate you will
19 only be helping yourself. This is the United States Govern-
20 ment agents, we are all college educated, we don't fool around
21 we're not like the Brooklyn police. If you cooperate you
22 will be helping yourself," and I said, "But you don't under-
23 stand," I said, "I am going to be thrown out of law school
24 or I'll never pass a character committee, I have so much on
25 my mind, I've got to speak to someone." And as if I never

1 md/lf

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2 said anything it was just disregarded and the questioning
3 went on. At which point it stopped and then they went inside
4 to my wife and I was alone in this detention cell. There
5 might have been -- no, I was going to say there might have
6 been someone like guarding the cell but I don't think at
7 this time there was.

8 Q And --

9 A Every once in awhile the door leading into that
10 room would open, like someone would walk in and someone would
11 walk out, and I heard them berating my wife and screaming,
12 you know, "Cooperate, you have got to cooperate," and my
13 wife was just sobbing like and I yelled out, "Don't say
14 anything," I said, "Don't let them do this to you, don't say
15 anything. Until they let me speak to you." At which time
16 Mr. Hall came running into the room, from the room with my
17 wife, like I was going to get hit, I was behind the bars,
18 and he said, "Shut up, I tell you to shut up." I said, "What
19 are you going to do, beat me?" I said, "I want to speak to
20 my wife. I want to speak to my wife." Then he just turned
21 around and walked back in the room.

22 Q Did you say anything about wanting to talk to
23 a lawyer at any time while you were at D.E.A. headquarters?

24 A Yes. I said I did. I mentioned that.

25 Q More than once?

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A Yes. I can't say how many times. Yes.

Q And what was the response when you said you wanted to talk to a lawyer?

A Nothing. It was like disregarded.

Q There was no response?

A No. I was told, "Your best bet is to cooperate. If you cooperate you will only be helping yourself." I was told that if you cooperate you will see in two, three weeks, you will be off -- you will consider us friends, on your side.

Q Did there come a time when you were permitted to talk to your wife privately?

A Yes.

Q Now, your wife has told us something about that conversation. Is there anything in the conversation that she related that you feel you want to add to?

A Yes.

Q What?

A Well, first, he wouldn't allow us to speak --

Q No, we are up to the point where you are talking.

THE COURT: Where did you speak?

A Excuse me. When we finally did speak I said, "Well, what do you want to do?" and my wife said, "They are going to send me to Riker's Island," and I said, "I know,

1 md/lf

Friedman-Direct

2 "they told me."

3 THE COURT: We are trying to get to what you
4 wanted to add to what she said.

5 A We decided we were going to tell who our source
6 was, and when we decided that we told Mr. Hall to come in.
7 He might have been accompanied by Smith.

8 Q And you both said it in unison?

9 A Correct.

10 Q All right. Now, after Nach was arrested and
11 brought to D.E.A. headquarters, did you help to persuade
12 Nach to cooperate with the authorities and give his source?

13 A Definitely.

14 Q And this was at the urging of the police, is that
15 correct, the agents?

16 A They couldn't get Nach to speak.

17 Q You spent the night at the Federal Correctional
18 Center, didn't you?

19 A Correct.

20 Q The following day you were taken to Mr. Flynn's
21 office or to the courthouse in Newark?

22 A Correct.

23 Q Tell us what happened. You are brought into
24 Flynn's office, is that correct?

25 A Correct.

1 md/lf

Friedman-Direct

2 Q Who brings you? Smith?

3 A (No response)

4 Q I withdraw it.

5 A No, you are right.

6 Q Smith brings you in?

7 A No, Smith went and got me. Smith was in the
8 office with Mr. Flynn. He came out and got me. And then
9 when he walked back he told me to wait and he walked into
10 Mr. Flynn's office and closed the door, and I was on the
11 outside. About five or seven minutes passed and the door
12 opened and they told me to come in.

13 Q So now you are in the office with Smith and
14 Flynn?

15 A Correct.

16 Q Now, what's the conversation?

17 A Mr. Flynn read me my rights. You know, he had --

18 Q He read you your rights?

19 A Yes.

20 THE COURT: We hear this every day.

21 A And then he said to me, "What we're going to do
22 is go across the street to a magistrate's office and you are
23 going to be arraigned."

24 I then said, I was on the verge of tears, I said,
25 "I am a law student," and he like stood up and slapped his

1 md/lf

Friedman-Direct

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2 head and he goes like, "I don't believe how stupid you
3 are, how could you be a law student." Then he says to me,
4 "Step outside for five minutes."

5 So I went outside and Smith remained in the room
6 with Flynn. Smith opened the door and told me to come back
7 inside. I went back inside and I sat down. It was myself,
8 Mr. Flynn, and Smith. We sat down and then he went into
9 this thing about law school and he said, "Do you know if
10 I" --

11 THE COURT: Who said?

12 THE WITNESS: Mr. Flynn said. Mr. Flynn did
13 all the talking. If Mr. Smith will say anything I will make
14 a reference but by and large it is Mr. Flynn who is going
15 to do the talking. He said to me, "If I file charges against
16 you, that's it, you have had it with law school, and what
17 we can do is you can help yourself by cooperating."

18 I was saying it at this time -- when he said
19 about going across the street to the judge the agents had
20 told me at the D.E.A. headquarters when I kept saying --
21 when they kept saying cooperate and I kept asking, "What will
22 happen if I cooperate?" they said the only person who can
23 do anything was the United States Attorney. So when the
24 United States Attorney told me I was going across the street
25 to be indicted or arraigned, excuse me, I like was -- I was

md/lf

Friedman-Direct

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1 just about to say, "I want to cooperate," because I would
2 have done anything, and as I was saying it he said it. He
3 said, "Well, you can cooperate." I said, you know, "What's
4 cooperation?" He said, "You work that out between yourself
5 and the agents."

7 Q Go ahead.

8 A And then he said, Mr. Flynn -- I said, "Well,
9 I am a law student, and I am very nervous that I will never
10 be able to practice law and I wanted to do so for such
11 a long time, and I see it just being washed down the drain,"
12 and he said to me, "Well, if you cooperate nothing will
13 happen to you." I didn't understand that. I said to him,
14 "What do you mean?" And he said to me, "If you cooperate
15 to our satisfaction you won't -- we won't bring forth these
16 charges." In other words, you are not going to be arraigned
17 today because you said of your willingness to cooperate, and
18 if that be the case you won't be liable to -- you know, he
19 won't bring charges.

20 Q Prosecute?

21 A He won't bring charges toward me, and if that
22 would be the case I would be able to practice law.

23 Well, I just met Mr. Flynn, I didn't know whether
24 to believe him or not, if I was getting a runaround or a
25 story or not so I kept pursuing the matter. I kept saying,

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1 "Will I be able to practice law?" He said, "Yes." I
2 said, "Well, I know you can't guarantee anything, but will
3 I be able to practice law? Will this destroy my record?"

4 And he kept saying, "No, it won't, trust me." As
5 a matter of fact, you will like -- he didn't say you would,
6 he said might like working on this side of the law, and
7 you will get a lot of insights which might help your law
8 career. He said, "After all, I haven't been out of law
9 school a long time and I understand the problems, which
10 is why I am doing this."

11 Then Mr. Smith said, "I've never seen this done
12 before, you are getting a very lucky break," and at which
13 point I said to him, "Well, are you sure I'll be able to
14 practice?" Then he went into this thing about deferred
15 prosecution. Now, I did not know what deferred prosecution
16 was. I'm still not sure if I understand it. It was never
17 really explained to me. He just kept using the term.

18 MR. BUCHWALD: Is this Mr. Flynn again?

19 THE WITNESS: Right.

20 A He kept using that term. And I didn't understand
21 it. And he said to me what he said, and this is one more
22 thing that I disagree with what my wife said that I just
23 recalled. He didn't say in six months we will review your
24 record. He didn't put it that way at all. The way it was
25

1 md/lf

2 put was this way. "You will cooperate with the agents.

3 I said to him, "Well, what does that mean?"

4 And he explained it to me, working it out with the agents.

5 And I said, "Will any other related charges be brought?"

6 I said, "Suppose I work with the agents," and this is just

7 the way I put it, "Suppose I work with the agents and you

8 think I am doing a good job and everything and you are ready

9 to, you know, not bring any charges, and then you say, 'Well,

10 Mr. Friedman, you did a nice job, and we're not going to

11 bring these charges but we are going to bring other charges.'"

12 I said, "Because what you are saying doesn't include extra

13 charges."

14 He then said to me, "This is it, there will be no

15 other charges. When you will be cooperating you will be

16 cooperating for this, and there will be no further charges

17 brought. this is it." Now he --

18 Q Let me interrupt you at that point.

19 Did you know at the time that you were with Mr.

20 Flynn that the Brooklyn cops had been on your trail in

21 connection with a couple of sales that you had made in Brookly

22 sometime before?

23 A Yes.

24 Q And --

25 A I found out the night of --

1 md/lf
2 Q How did you know that, is that something that
3 occurred at D.E.A. headquarters the night you were arrested?

4 A Yes.

5 Q Tell us about that briefly.

6 A I was about to get my history taken, and they
7 had a discussion and the Brooklyn police asked permission to
8 take me into a room. I went into a room and they told me
9 they had been on --

10 Q Who is "they," please, identify them.

11 A Givanelli, Paulson, Pollini --

12 THE COURT: Where were you at this time?

13 THE WITNESS: In a D.E.A., like an interviewing
14 room or something.

15 Q Who were the men?

16 A Pollini, Givanelli, Paulson, and there were a
17 few others, all from the Brooklyn --

18 Q So they talked to you privately?

19 A Yes.

20 Q What did they say to you?

21 A They said no charges were brought.

22 Q In Brooklyn?

23 A Right. But we know about it, and you can help
24 yourself by cooperating with us. And they said that relax,
25 we won't bother you for a few weeks, and calm down, and

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1 you will be released, and when you are released we'll
2
3 get in touch --

4 THE COURT: Did you understand them to be talking
5 about something other than the transaction for which you
6 had been picked up?

7 THE WITNESS: Yes, they explained it to me.

8 Q This was the Brooklyn police?

9 A Yes.

10 Q When you were with Mr. Flynn, did you make any
11 allusion to the Brooklyn situation?

12 A Yes.

13 Q And tell us what was said on that subject.

14 A Mr. Flynn seemed upset by it.

15 Q You mean you told him about it?

16 A Yes.

17 Q All right.

18 A Of my free will. I told him -- the reason I told
19 him was when he said to me no other charges would be
20 brought besides the ones already, because I was afraid
21 that if he just knocks these off he could just bring subse-
22 quent charges and I would be in the same hot water. I
23 said, "Well, what about the Brooklyn charges?" And he said
24 to me that he would call the district attorney in Brooklyn
25 that was in charge of the case and I think he tried to get him

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2 but couldn't, and he would try to lop it altogether so
3 that my cooperation would mean no indictment in Brooklyn,
4 also. Besides the promises that he made me with the charges
5 that I was arrested for, the charges that I am now in front
6 of the court for, and the Brooklyn charges, would all be
7 handled through these series of cooperations.

8 Q Now, did he ever explain to you what he meant
9 by cooperation?

10 A Yes. I just want to --

11 Q Do you want to finish something?

12 A Yes. About the six months. He did not specifically
13 say six months and then you will stop there and then I'll
14 check. What I said to him is how long will I have to
15 cooperate, this could go on endlessly until I'm like 90
16 years old, and he said to me, "Look, we're not mad men."
17 or something like that, I don't know if it was that strong
18 a word. In other words, we don't expect that of you, and
19 if you cooperate, in like six months -- he said it very
20 generally, like it could have been five, four, seven or
21 eight.

22 THE COURT: You mean he meant a reasonable period
23 of cooperation?

24 THE WITNESS: A reasonable amount of time.

25 Q Did he say what the cooperation meant, like going

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2 out and helping the agents make cases, did he talk about
3 that?

4 A Yes.

5 Q What did he say?

6 A He said, "What you will do is you will work with
7 the agents, not with myself, not with Mr. Flynn, and you
8 will do what they tell you. They won't tell you to do any-
9 thing that will put you in peril, that will put you in harm,
10 that will create friction between yourself and --

11 Q You understood it meant going out and making
12 cases with the agents, giving them the sources you knew
13 about, is that right?

14 A Buys like, yes.

15 Q Is that correct?

16 A Yes.

17 Q Are you still at law school?

18 A Yes.

19 Q Second year?

20 A Yes.

21 Q You are attending law school?

22 A Yes.

23 THE COURT: How did you do last year?

24 THE WITNESS: Fairly well, your Honor.

25 Q Have we covered now the conversation in Mr. Flynn's

1 md/ll

2 office?

3 A Up to a point. Because, you see, I was in a
4 state where I felt -- I saw my life going by me, and it
5 slipped like water slipping through my fingers --

6 THE COURT: Without making light of it, I understand
7 that, you have said it many times.

8 THE WITNESS: There is a point in the affidavit,
9 your Honor, where it says that I asked too many questions,
10 and I just wanted to bring that out. The reason --

11 THE COURT: I understand.

12 Q You kept on pressing --

13 THE COURT: You were desperate, I know, and you
14 wanted to be as sure as you could possibly be.

15 A I asked him so many times and he gave me the
16 same answer so many times, "Don't worry, don't worry, you
17 will be able to practice, just cooperate with the officers."

18 Q All right. You have made it very plain.

19 So now you leave Flynn's office and it is your
20 intention to cooperate with the agents, is that correct?

21 A They told me to relax, get your life back together,
22 relax over the weekend, and they would call us early the
23 next week.

24 Q So you got a telephone call. A few days later,
25 right?

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2 A Right.

3 Q And that was from whom?

4 A On Monday I received a phone call from Officer
5 Pollini who was --

6 Q He was a Brooklyn cop?

7 A Right.

8 MR. BUCHWALD: Police officer.

9 A And he said to me -- he said to me, "Are you
10 ready to cooperate?" Now, it was made plain to me in Mr.
11 Flynn's office that I would be cooperating with the federal
12 agents, and everything that took place with my cooperation
13 would be through the federal agents. When the Brooklyn
14 police officer called me I was totally confused, I didn't
15 know what to do, I was afraid to say no because like damned
16 if you do and damned if you don't, so I told him exactly
17 what I am telling you now. I said, "Well, I was told by
18 Mr. Flynn I am supposed to do my cooperation through the
19 federal agents, and they would get in contact with you
20 I don't know what -- he said, "Are you ready?" you know, in
21 a harsh tone. I told him that -- I repeated myself, and
22 even then, he didn't like slam the phone down on me but
23 he certainly didn't sound pleased.

24 Q What's the next thing that happened?

25 A I immediately called Mr. Flynn to tell him about

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2 this conflict. And he answered the phone, was very nice
3 on the phone. He told me, "You were told to cooperate with
4 the agents. If you have any more questions you will call
5 the agents and not his office," and then I said, "Well, the
6 reason I called you, sir, instead of, you know, the agents
7 right this second was because of this phone call that I
8 just received and I really didn't know where to go."

9 THE COURT: What did he tell you to do about
10 Pollini?

11 THE WITNESS: He told me to work through the
12 federal agents, and I think he said he will take care of
13 it, or he will work it out.

14 THE COURT: With Pollini? He would work it
15 out with Pollini?

16 THE WITNESS: Not necessarily with Pollini, but
17 with that jurisdiction.

18 THE COURT: I mean take care of it, get the monkey
19 off your back?

20 THE WITNESS: Yes. I guess. And then I said to
21 him again, I said, "Listen, all those things that we
22 discussed on Thursday," I said, "If I cooperate and everything
23 he said, "Listen, I am no liar," he said, "You know what
24 I said," he said, "If you help the police, cooperate -- if
25 you cooperate with the agents everything I said stands, and

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2 "come on, Larry, quit bugging me, and get your head together,
3 and you will see you are going to start liking it and call
4 the agents from now on."

5 Q Did you call -- what did you do after you finished
6 speaking to Flynn?

7 A I don't really recall if I called the agents
8 or the agents called me first. But when they did call --

9 THE COURT: Is this the same day or when?
10 Approximately the same day?

11 THE WITNESS: It was either that night or the
12 next day, your Honor. I don't remember if I called -- I
13 remember speaking to the agents.

14 THE COURT: But when you spoke to them what
15 happened? First of all, who did you speak to?

16 THE WITNESS: Either -- let me think. Either
17 Hall or Smith.

18 THE COURT: And what was said?

19 THE WITNESS: They told me that Givanelli from
20 New York City Police would be in charge of whatever I do,
21 and whatever I do would be reported from the New York City
22 Police to the federal agents, that I was to work with
23 Givanelli, he was my assigned man, at which point I under-
24 stood that and --

25 Q Then did you subsequently work with Givanelli and

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2 make three cases for him?

3 A Yes.

4 Q And what are the names of the cases that you made?
5 Who are the people?

6 A Paul Edelman, Bradley Cohen, and Simon Dansinger.

7 Q Now, did there come a time when you received a
8 call from Police Officer Paulson telling you to come down
9 to the municipal building in Brooklyn?

10 A Yes, sir.

11 Q Was that --

12 THE COURT: Approximately when was that?

13 MR. BLOCK: I am trying to fix the time.

14 Q Was that before or after you made the case with
15 Givanelli?

16 A Before.

17 Q And about how long after this September 24th
18 arrest was it, approximately? A month, later, two months
19 later?

20 A Maybe three or four weeks later. I am not positive

21 Q When you were called down, were you told, were
22 you taken to the District Attorney's office in Brooklyn and
23 told that you had been indicted for those sales you had
24 made in Brooklyn?

25 A I wasn't taken down. I went myself. And I wasn't

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2 told that's the reason I was going the e for.

3 Q I understand that, but when you got there?

4 A Mr. Taub, who was the District Attorney, told me
5 that --

6 THE COURT: I am getting lost here. How did
7 you happen to go to the District Attorney's office?

8 THE WITNESS: I got a call from Sergeant Paulson.

9 THE COURT: Who is he?

10 THE WITNESS: I think he is Givanelli's superior.

11 THE COURT: In the New York City Police Depart-
12 ment?

13 THE WITNESS: Correct.

14 MR. BLOCK: Of the Brooklyn police?

15 THE WITNESS: I believe they are Queens police.

16 THE COURT: Were they?

17 THE WITNESS: I think they are Queens policemen.

18 THE COURT: Did you go there?

19 THE WITNESS: I was told to go to Brooklyn.

20 THE COURT: You went to Brooklyn?

21 THE WITNESS: The municipal building.

22 THE COURT: In Brooklyn?

23 THE WITNESS: Correct. And I asked him how

24 come I have to go, and he gave some reason, anyway I ended
25 up there and I took my wife with me. After a period of time

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1 of waiting I was told -- Mr. Taub came in and said to
2 me, "Do you know you were indicted?"

3 THE COURT: And Taub is the Assistant District
4 Attorney or Federal District Attorney?

5 THE WITNESS: No, he is a Brooklyn District
6 Attorney. I think he is in charge of the drug department.

7 THE COURT: He told you you were indicted?

8 THE WITNESS: Right.

9 THE COURT: You already had been indicted?

10 THE WITNESS: Yes. And I was shocked.

11 Q There is a pending case against you in Brooklyn?

12 A Yes.

13 Q It hasn't been disposed of?

14 A No, sir.

15 Q It was based on the sales you made in Brooklyn
16 which you had discussed with Mr. Flynn?

17 A Yes.

18 THE COURT: It probably isn't relevant, but as
19 a matter of curiosity, has any arrangement been reached
20 with the Brooklyn authorities on that case?

21 MR. BLOCK: I can tell you this. It has been
22 adjourned. I have been in touch with the lawyer who had
23 represented Mr. Friedman in Brooklyn and I have been telling
24 him about the pendency of this proceeding. The case in
25

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2 Brooklyn is on for the 28th, and I expect to go there and
3 talk to the lawyer who has been assigned to Mr. Friedman
4 presently and try to get them to hold it in abeyance
5 pending --

6 THE COURT: Mr. Friedman is keeping the members
7 of the bar busy.

8 MR. BLOCK: That's right. It is all Mr. Flynn's
9 fault, we say.

10 THE COURT: Come on now, Mr. Flynn didn't sell
11 the qualudes.

12 MR. BLOCK: That's true, but he made some promises.

13 Q In any event, did you talk to anybody after this
14 episode in Brooklyn? Did you talk to the agents?

15 A Could you just refresh me? What do you mean after?
16 After what episode?

17 Q After you had been called to Brooklyn and spoken
18 to Mr. Taub, did you talk to the agents at all?

19 A Yes.

20 Q About this episode?

21 A Yes.

22 Q And what did they say?

23 A I spoke to Mr. Hall.

24 Q Who did you talk to?

25 A Mr. Hall.

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2 Q What did he say?

3 A He said you will work through Givanelli and all
4 your cooperation will work toward everything. In other
5 words, it will encompass what happened in New York but it
6 will be reported to the federal side and we know what's
7 going on and you work with Givanelli.

8 Q So you did work with Givanelli and made the
9 cases we discussed before?

10 A Correct.

11 Q Then did there come a time you were indicted in
12 the Southern District of New York in connection with the
13 very indictment involved on this motion?

14 A Yes, sir.

15 Q And that was in January of 1975, is that
16 correct?

17 A Yes.

18 THE COURT: Is it your contention that Mr. Flynn
19 represented that he would be able to prevent prosecution in
20 districts other than his own?

21 MR. BLOCK: That's correct. That's what the
22 witness testified to, your Honor.

23 THE COURT: Hold it. Will you question him a little
24 more fully about that?

25 MR. BLOCK: If I may, your Honor, I would like to

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2 recall the testimony. He said that he --

3 THE COURT: I don't want to get your version of
4 it. I would either like to hear it from the record itself
5 or hear him go into that.

6 Q Would you answer his Honor's question? You
7 heard his Honor's question.

8 THE COURT: Let me ask the question perhaps.

9 Is it your claim that Mr. Flynn talked to you
10 about the extent -- I mean about whether you might be prosecuted
11 in other districts other than that of New Jersey?

12 THE WITNESS: Yes, sir.

13 THE COURT: Will you tell me what he said and
14 what you said? First of all, who else was there when this
15 conversation took place?

16 THE WITNESS: Mr. Smith --

17 THE COURT: This is at the time that you were
18 brought to his office the morning of September 25th before
19 your wife came?

20 THE WITNESS: It could have been either when I
21 was alone or when my wife was with him.

22 THE COURT: Never mind whether your wife was
23 there or not. What did Mr. Flynn say and what did you say,
24 how did it come up?

25 THE WITNESS: It came up because I was afraid that

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2 if -- I didn't understand what he meant by he wasn't
3 going to proceed with these charges if I cooperated. Then
4 I asked him, "Well, does that mean there will be other
5 charges brought if you drop these?"

6 He then said to me nothing else --

7 THE COURT: You mean other charges in his district?

8 THE WITNESS: Right. In his district. And he
9 said no. There wouldn't be any other charges.

10 THE COURT: I know that.

11 THE WITNESS: Then I told him about what happened
12 in Brooklyn. I said, "Well, what about Brooklyn?" and he
13 said to me what he is going to try to do --

14 THE COURT: Try?

15 THE WITNESS: Right.

16 THE COURT: All right. What did he say about this
17 area here, not Brooklyn?

18 THE WITNESS: I don't follow you, your Honor.

19 THE COURT: The Southern District of New York.

20 Are you saying he would try wherever you might be in trouble
21 to help you out?

22 THE WITNESS: Can I just ask you a question?

23 THE COURT: Sure.

24 THE WITNESS: Do you mean -- when you say other
25 jurisdictions, do you mean --

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2 THE COURT: He had authority only for the State
3 of New Jersey. I know that. Maybe you didn't, but I do
4 know it, and it's a fact. He was an Assistant United States
5 Attorney for the District of New Jersey, right?

6 THE WITNESS: Yes, sir.

7 THE COURT: He could control what was happening
8 in the District of New Jersey, subject only to the approval
9 of his superiors, but he couldn't control what was happening
10 in Brooklyn or in Manhattan, could he?

11 THE WITNESS: I guess not, your Honor.

12 THE COURT: You apparently realized that yourself
13 because you asked him. You told him about what was happening
14 in Brooklyn.

15 THE WITNESS: I didn't realize anything about
16 the Southern District of New York.

17 THE COURT: So you didn't talk about the Southern
18 District of New York?

19 THE WITNESS: Sure I did, but I didn't mention
20 it per se.

21 THE COURT: What did you say that might apply?

22 THE WITNESS: Would any other charges stemming
23 from this drug offense be held against me besides the
24 immediate charges which were in New Jersey? He definitely
25 said no.

2 THE COURT: But he didn't say in so many words
3 wherever you have gotten into trouble or any words to that
4 effect I'll get in touch with the authorities and see to it
5 that nothing happens?

6 THE WITNESS: What he did say, "Anything stemming
7 out of this, if you cooperate, nothing would happen."

8 Q What did he say about the Brooklyn situation?

9 THE COURT: I am not concerned about that.
10 I've got my own problems.

11 I do understand that you spoke to him about
12 Brooklyn in particular and he said he would get in touch
13 with them or words to that effect.

14 THE WITNESS: I didn't speak to him about Brooklyn
15 until I went over to any related charges about that offense
16 which was the qualude offense.

17 THE COURT: I don't know what your definition
18 of related is either. If you sold qualude five years ago
19 in China, would you consider that related?

20 THE WITNESS: No.

21 THE COURT: You didn't sit and define with each
22 other what constituted --

23 THE WITNESS: Yes, we did.

24 THE COURT: What was the definition?

25 THE WITNESS: The definition of related was

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2 anything coming out of the same operative facts that
3 caused my arrest and the reason I was in Mr. Flynn's office.

4 THE COURT: Let me ask Mr. Buchwald.

5 Mr. Buchwald, does your office agree or disagree --
6 and I am not -- I just want to know what I have to determine --
7 whether the charges here do arise out of the same operative
8 facts broadly construed?

9 MR. BUCHWALD: In a broad sense they would be
10 related. My recollection is that one of the overt acts
11 in the conspiracy does refer to the 10,000 qualudes.

12 THE COURT: I recall from matters that I have
13 had to handle on co-defendants in this case that the
14 judiciality of those who were indicted overlaps with the
15 events of the Southern District indictment.

16 Q I want to ask you a couple of questions about
17 the indictment.

18 Mr. Friedman, you gave Jeffrey Nach as your
19 source, is that correct?

20 A Correct.

21 Q Do you know now who Nach's source was?

22 A Yes.

23 Q Who was that?

24 A Jeffrey Rudd.

25 Q And was Rudd a resident in New York, to your

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knowledge, or don't you know?

A I think he had his own apartment in New York, but he was living in Florida, and his parents lived in New Jersey.

Q I see. Are you telling us as a result of your own knowledge from being there when Nach cooperated and gave his source that Nach gave Rudd as his source? Is that right?

A Right.

Q And you heard him say that?

A Right.

Q Now, there are some other names here --

THE COURT: We don't need to go through them all. I think Mr. Buchwald doesn't seriously contest that aspect of the case.

Q I will finish up with you by showing you Defendant Exhibit A. You signed this piece of paper, didn't you?

A Yes. First --

Q Let me ask you this. Did you read it over before you signed it?

Withdrawn.

Tell us the circumstances under which you signed that piece of paper?

A Certainly. Mr. Flynn said, "I'll have" -- he was

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2 trying to explain to me what deferred prosecution was and
3 waiver of arraignment and I was in a daze and had no idea
4 what he was talking about.

5 THE COURT: It is possible to make it understood
6 especially to someone going to law school.

7 THE WITNESS: I didn't understand it. Maybe
8 it was the condition I was in.

9 THE COURT: That's more like it. Do you understand
10 it today?

11 THE WITNESS: Yes, sir.

12 He asked me to write in my own words what was
13 discussed in that meeting, because he said something about
14 his secretary being out or something.

15 THE COURT: Actually, it is a good idea anyway.

16 THE WITNESS: Or not at her desk. I was about
17 to do that, my wife was present at this time -- I was
18 about to do that when evidently his secretary came back
19 or he got something and he gave me this, and I didn't
20 want to sign it because I didn't really understand it,
21 because --

22 Q You didn't understand it. Now, did you discuss
23 it with Mr. Flynn?

24 A Yes, because he said --

25 Q What did Mr. Flynn say to you which led you to

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2 sign that?

3 A He told me that all this means is that's a
4 speedy -- you are waiving your right of a speedy arraign-
5 ment, and all that we discussed about cooperation would
6 apply, and you sign this and don't even consider yourself
7 arrested and you can just walk out and go home. And I
8 did.

9 MR. BLOCK: I have no further questions.

10 THE COURT: I am concerned about timing. I
11 have a meeting of judges at five o'clock. We seem to be
12 taking longer than I anticipated.

13 MR. BUCHWALK: Mr. Flynn is here from New Jersey.
14 I was wondering if we could put him on.

15 THE COURT: Do you want to put him on before
16 you cross examine? How long will your cross examination
17 take?

18 MR. BUCHWALD: I think there will be diametrically
19 opposed testimony.

20 THE COURT: The point is that Mr. Friedman
21 has a right to be present when Mr. Flynn testifies, and
22 you might want to question him first.

23 MR. BUCHWALD: I understand that.

24 I think for Mr. Flynn's sake I would prefer to
25 put him on

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2 MR. BLOCK: I have no objection.

3 (Witness excused)

4 T E R E N C E F L Y N N, called as a witness on
5 behalf of the Government, having been first duly
6 sworn, was examined and testified as follows:

7 THE COURT: I know who Mr. Flynn is, and I
8 know where he was on September 25th, so let's get right
9 to the meeting and hear what he has to say about it.

10 DIRECT EXAMINATION

11 BY MR. BUCHWALD:

12 Q Let me direct your attention to September 25,
13 1975. Would you tell his Honor what, if any, contact you
14 had --

15 THE COURT: You know the issues in this matter?

16 THE WITNESS: Yes, I do.

17 THE COURT: Will you tell us what happened
18 after Mr. Friedman was brought into your room?

19 THE WITNESS: Mr. Friedman was brought into my
20 room with Special Agent Smith, of the Drug Enforcement
21 Administration. At that time I advised Mr. Friedman of
22 his rights pursuant to the Miranda warnings. Thereafter I
23 spoke to him about what my understanding was of the case
24 against him at that point. That is strictly limited to the
25 seizure of . . . I recall to be approximately 10,000 qualude

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tablets the day before.

I indicated to him at that time that I understood that his wife had cooperated up to that point with D.E.A. agents and had led them at least to the arrest of another individual Jeffrey Nach. Jeffrey Nach was also outside the office there at that time. I told him about what was going to happen, we were going to go across the street and we were going to file the complaints, and whatever.

He indicated that he wanted to cooperate at that time. We said fine. I was going to have him wait outside and speak to his wife and go over the same thing and then speak to Jeffrey Nach. Just as we were about to get up, I was standing up and I said, "Okay, fine," and he said, "There is one other thing. I am a law student." So at that point I sat down and I yelled at him, I swore at him at that point.

THE COURT: Good for you.

THE WITNESS: I explained -- I didn't explain anything. I asked him why he did such a thing, and then he also said he was a teacher. So I said, you know, what's going to happen, of course, we go across the street and file this complaint and that's pretty much it, we have no more, you know the damage is done at that point and he would be explaining the rest of his life. Of course he was con-

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2 cerned about it because that's why he brought it up to me,
3 I imagine.

4 Anyway, I excused him and he spoke to Special
5 Agent Smith and we thought what we would do, and our considera-
6 tion at that point in speaking to him was if we go across
7 the street in ten seconds we were going to finish this guy.
8 So what we said we would do is --

9 THE COURT: What confuses me is you thought in
10 ten minutes you would finish him by filing the complaint.
11 This indictment has been pending for how long I don't know.
12 He is still in law school.

13 THE WITNESS: It is my understanding his going
14 to law school wouldn't be affected. It is what's going
15 to happen when he has to apply for the bar, and I think
16 there is a background check and he has to provide information
17 regarding his record. I don't think that would affect
18 his law school but what ultimately would happen to him when
19 he would apply for the bar.

20 So we had him come back in and told him what we
21 thought would be an alternative, that we could wait,
22 suspend the proceedings, I would learn more about the case,
23 I would learn more about him, and he would have an opportunity
24 to cooperate, to show us what type of guy he was, and that
25 we would consider handling his case in any number of ways after

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2 I learned about it, and I did say at that point that
3 one of the things we think about would be deferred prosecu-
4 tion but that I couldn't make any guarantees at that time.

5 He persisted in trying to get from me a definitive
6 plan of what exactly he had to do and what would be enough
7 for him to do in order for him to get -- to have no charges
8 filed against him, and I consistently told him that I
9 couldn't make any determination at that point because I
10 just didn't have any facts on which to make a determination.
11 At that point we were willing to suspend the proceedings
12 to the point, and learn whether or not he was going to
13 cooperate, learn more about the case. He continued to
14 ask for this. Eventually, I told him, you know, just wait
15 outside and think about it for awhile, and then his wife
16 came in and I explained to her what I had told her husband,
17 I believe, and then they came in together, and we had forms
18 prepared for them to sign because we recognized after
19 arresting them we did have an obligation to present them
20 before the magistrate unless, of course, they waived that,
21 so we had the forms typed up and we showed them to them.
22 He looked at the forms and he was concerned again, he wanted
23 some assurances, and one of the things he said, "So if I
24 cooperate I could do all these things, I could cooperate,
25 make cases, and you guys could still turn around and indict

1 md/lf

2 me, right?"

3 I said, "Practically speaking, right. I can't
4 give you any guarantees at this point."

5 And he went over and over again the same type of
6 questioning about it, and I continually told him I couldn't
7 guarantee anything, and eventually his wife said forget it,
8 you know, that's all you are going to get, so she signed
9 the statement, and then he signed the statement, and then
10 they left. I left then with the agents to work out the
11 cooperation and to do whatever cases that they had to do.

12 THE COURT: There never has been a prosecution
13 in your jurisdiction?

14 THE WITNESS: No, there never has. The reason
15 for that is that the case as I understood it developed into
16 a case that came into our jurisdiction which we did indict
17 some individuals but eventually it moved into New York
18 where most of the stuff was done here in New York so the
19 case centered in New York.

20 THE COURT: I am, of course, aware of that,
21 because I have the jurisdiction of the whole case, and
22 also I have been given the material that was before Judge
23 Stern, and so on.

24 Let me ask you this. I am particularly interested
25 in any discussions about matters that might arise outside

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2 your district. Did you have any such discussion?

3 THE WITNESS: No, because at that time we had
4 no knowledge of anything outside the district. All I
5 knew at that time was that he had been arrested on a
6 qualude case for distribution by D.E.A. agents in New Jersey.

7 THE COURT: Mr. Buchwald.

8 Q Just so we can get it absolutely clear on
9 the record, did you at that time have any knowledge what-
10 soever about any case or pending case or possible case
11 against the defendant in Brooklyn?

12 A No.

13 Q Was there any discussion whatsoever between the
14 defendant, Mr. Friedman, and you concerning a case or
15 pending case or possible case in Brooklyn?

16 A I retract that. There was something said about
17 a case where he had -- because he was a teacher in New York
18 that somehow that that would be known, or that there was
19 something about an ancillary charge in New York. I can't
20 recall. There was also a case that he had for some marijuana
21 on his porch in New Jersey, and that was the thing we
22 really talked about. I don't recall going into anything on
23 any case in New York, but we talked mostly about the charges
24 that he had, attorney that he had in New Jersey. I can't
25 even remember the name of the town, but that dealt with

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whether or not those charges would be taken care of, you know, if he cooperated or whatever. And I said that he would have to get me the name of the attorney, and I think at that time he also indicated that the attorney had told him that everything would be taken care of, but that we wanted to make sure that we learned the facts about that and we wanted to speak to the attorney about that particular case that he had.

Q This is the marijuana case in New Jersey?

A Yes.

Q Do you have any recollection of any discussion by you pertaining to a call or possible call you would make to a district attorney in Brooklyn?

A I believe I did make a call. Now, whether or not there was a conversation to that regard I never -- I don't think so. I think the call that I made was a result of what I learned later through Agent Smith of charges that he had in Brooklyn at the time.

THE COURT: You mean you believe that you made a call after the 25th of September?

THE WITNESS: Yes.

THE COURT: But you didn't talk on the 25th of September about this?

THE WITNESS: Not to my recollection.

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2 Q Do you know whether or not this was after Mr.
3 Friedman or before Mr. Friedman's indictment in Brooklyn?

4 A I really don't know.

5 THE COURT: Let me ask you this:

6 Without looking at other things let me ask you a
7 few questions. I am not quite clear whether you are saying
8 that you don't remember any conversation about the
9 possibility -- put aside that marijuana on the porch --
10 that you don't remember any conversation as to possible
11 charges like the ones before you but that might come up else-
12 where, or you do remember, on the 25th of September.

13 THE WITNESS: Quite frankly I am not sure. I
14 don't know. I know at the point in time I had no details
15 about any cases.

16 THE COURT: All right.

17 Q At any time on the 25th of September during the
18 course of your conversations with Mr. Friedman, did Mr.
19 Friedman say anything about mistreatment of any kind by the
20 agents?

21 A No.

22 Q Do you recall whether or not you asked Mr.
23 Friedman whether he had any complaints about the way he
24 had been treated?

25 A No. I really don't think I asked him.

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1 Q During the course of your conversation with
2 Mrs. Friedman on the morning of September 25th, did she say
3 anything at any time about mistreatment by any of the agents?
4

5 A No.

6 THE COURT: Mr. Flynn, in your opinion have Mr. and
7 Mrs. Friedman cooperated within your definition of cooperation
8 since September 25, 1975?

9 THE WITNESS: Quite frankly, your Honor, I have
10 no really concrete knowledge of what they have done or not
11 done.

12 THE COURT: Have they done whatever you asked
13 them to?

14 THE WITNESS: I didn't specifically ask of them
15 anything.

16 THE COURT: I see.

17 THE WITNESS: The idea was --

18 THE COURT: Have you had any contact with them
19 since the 25th of September?

20 THE WITNESS: Yes. There was a phone call in
21 which I believe Mr. Friedman called me sometime thereafter,
22 I don't recall the date and at that time he asked me again
23 basically the same type of questions about his cooperation,
24 how much he needed to cooperate or whatever, and I said that
25 I couldn't speak to him about that.

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2 THE COURT: You told him if he cooperated in
3 effect that you would give consideration in the way of
4 deferred prosecution, and so forth, but, of course, in
5 your district you haven't prosecuted him, but what did you
6 have in your mind as being cooperation and who was to decide
7 whether there was cooperation. In effect I am being asked
8 now to decide whether he kept his side of the bargain and
9 I am trying to get assistance in learning what the bargain
10 was and who is supposed to give me a report as to whether
11 he has done his share.

12 THE WITNESS: Well, your Honor, let me correct
13 it by saying this: I never said to him that if he
14 cooperated then he would get deferred prosecution. I said
15 that's one of the things that I would consider.

16 THE COURT: What else would you consider?

17 THE WITNESS: I would consider how much he was
18 involved in this whole thing. We had first a simple
19 arrest, and I am sure you are aware the first day of the
20 arrest you don't have all the facts of the case before you.
21 You don't know if this individual is a king pin or only a
22 minor role, and at that point I would be remiss in my
23 duties if I even suggested to him at that point that --

24 THE COURT: This was more than just a routine
25 statement of assistant to a defendant who, if you cooperate,

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2 it will help you out and we'll tell the judge, and so on.
3 The very fact of the distance of this law school, and so
4 forth, which you, yourself, you said recognized could ruin
5 us just by filing your complaint made it a somewhat different
6 proposition.

7 THE WITNESS: Right.

8 THE COURT: He was, it seems to me, not unwittingly
9 and I am not criticizing you for the way you handled the
10 matter, I thought you were generous and you handled the
11 matter the way a conscientious law enforcement official
12 should, but I am now trying to do justice to him as well.
13 I am trying to get the feeling of the extent to which he
14 was led to believe that if he behaved and did what a good
15 citizen should do under the circumstances he wouldn't be
16 prosecuted, yet he has been prosecuted. Not by you but
17 by somebody else.

18 And I am trying to -- I don't say Mr. and Mrs.
19 Friedman don't say -- that you promised them anything in
20 the use of the word promised. Indeed, they admit you told
21 them you couldn't guarantee things. They did say that you
22 and others with whom they dealt on that day kept repeating
23 so often that if they cooperated they had nothing to worry
24 about that they assumed if they cooperated they indeed wouldn't
25 be prosecuted. Would you say that was a fair reading from

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their point of view or not?

THE WITNESS: No, your Honor, I don't think it would be a fair reading. I think that we went overboard to say that we had to look at everything, we had to evaluate the case. At that point we couldn't make any promises or say even that they had nothing to worry about, because we would have no idea at that point what their cooperation would be or could be. I certainly couldn't commit myself to cooperation in the abstract.

THE COURT: Of course not.

THE WITNESS: Because cooperation entails so many things. What we wanted to do is let them know that there was a purpose for our postponing the hearing, that really the purpose was for them. We wanted to let them know there was alternatives one of which was deferred prosecution, but there were other alternatives, certainly, and I explained to him there may be a question of what charges he may be involved in, whether it would be limited, or giving him greater exposure, but not this is the one goal he is looking for, and if he cooperates then that's what he gets, deferred prosecution.

I at that point had not sufficient knowledge to be able to even suggest that as the ultimate goal for him.

Now, as to what I understood cooperation to mean,

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1 at that time I had no idea of what he could do, what he was
2 capable of, and, therefore, cooperation was really relative
3 to what the guy was really after.
4

5 THE COURT: To a law enforcement official if
6 you help us in at least a minimal way if not a maximal
7 way he'll do something for you. What he has done I don't
8 know, but we all agree he has named Mr. Nach, he and Mrs.
9 Friedman. What further cooperation has been given I don't
10 know. But I don't think it is so complicated that we don't
11 know what's meant by cooperation.

12 THE WITNESS: The only thing I can say is that
13 cooperation is relative to how much the individual can
14 cooperate.

15 THE COURT: Sure it is, but if he has cooperated
16 to the extent that he can I still have the question of what
17 to do about it.

18 BY MR. BUCHWALD:

19 Q Did there come a time during the course of the
20 conversations that you had with Mr. Friedman on the morning
21 of September 25th when you reiterated that if he wanted he
22 could proceed with arraignment proceeding that morning?
23 Was that made clear?

24 A Right. Well, that was a --

25 THE COURT: I don't think that is in dispute. Of

course if they wanted to be arraigned they could be arraigned.

THE WITNESS: That's one of the things I said after Mr. Friedman went over and over again, kept going over these assurances. I was frustrated at that point. Here I was trying to do something, and he wanted assurances that all he had to do is such and such and such and such and then there would be no problem.

Q When did you first become aware that an indictment had been filed against Mr. Friedman in Brooklyn?

A I can't honestly tell you. I don't know.

Q Do you have any recollection of the time period between the filing of the indictment and your knowledge?

A No. It would be maybe one phone call out of so many and I really haven't figured out exactly when that was.

Q Did Mr. Friedman ever call you and say anything to the effect that, "Hey, I have been indicted in Brooklyn, you have broken your promise?"

MR. BLOCK: We don't claim that.

THE COURT: You don't claim what?

MR. BLOCK: We don't claim there was any call by Mr. Friedman to Mr. Flynn.

THE COURT: I don't suppose it is a question of a call. I think Mr. Buchwald is simply trying to find out

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1 if Mr. Friedman gave evidence of his construction of the
2 agreement by calling up and complaining that it had been
3 broken by calling, visiting, writing, doing anything.
4

5 A I don't remember any such call.

6 Q Do you remember any such call or visit or letter
7 concerning the filing of the indictment in this case on
8 January 8th?

9 A No. He has not contacted me. After that phone
10 call I have spoken of, I called Mr. Friedman simply to
11 ask him to come down to our office to discuss his coopera-
12 tion. We set a time for it, and because of commitments that
13 I had I had to break that time, that appointment, and that
14 was the last I ever spoke to Mr. Friedman until I saw him
15 here today.

16 Q Do you recall approximately when that was?

17 A No, I don't. It probably was sometime during the
18 winter, but I don't know exactly when.

19 MR. BUCHWALD: Your Honor, if I may just have
20 thirty seconds.

21 THE COURT: Surely.

22 (Pause)

23 Q Did you ever tell Mr. Friedman that he wouldn't
24 be prosecuted for anything related in any way to the offense
25 which he had been arrested for, or any words to that substance

1
2 THE COURT: If he cooperated.

3 Q If he cooperated?

4 A No.

5 Q Did you ever tell him that the waiver which you
6 were asking him to sign embodied an assurance that he
7 wouldn't be prosecuted if he cooperated?

8 A No.

9 Q Was there anything he said or did on September
10 25th which led you to believe or suspect that he was under
11 the apprehension as your meeting with him on the 25th
12 concluded that if he cooperated he wouldn't be prosecuted?

13 A No. Everything that we did was to dispel him
14 from that feeling, and everything that he said to us was
15 toward trying to get us to confirm that hope or what he
16 said he wanted out of the agreement.

17 Q And does that include the one statement that I
18 believe you referred to where he asked does that mean even
19 if I cooperate and I do this and do that and do that there
20 is no guarantee that I might not be prosecuted?

21 A Right.

22 MR. BUCHWALD: I have no further questions.

23 THE COURT: I would like to ask a question or two.

24 There are two things that anybody in Mr. Friedman's
25 position would have wanted to know and, of course, he did

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2 want to know. The first is, you know, what do I have to
3 do to satisfy you guys and to get some kind of a commitment
4 that I won't be prosecuted to which your answer, of
5 course, was, "I can't guarantee that you won't be prosecuted,
6 cooperate, it will help you," and so forth.

7 But Mr. and Mrs. Friedman, Mrs. Friedman perhaps
8 even more so, has testified that you and the other people,
9 the law enforcement people in question, continually kept
10 saying, "Look, if you cooperate, everything will turn out
11 all right;" he said, "What about law school?" You said,
12 "If you cooperate you won't have to worry about it," and so
13 forth and so on.

14 Would you say that was a fair, assuming, of course
15 it wasn't precise words, that that was a fair statement
16 of what was said on the part of the law enforcement
17 authorities, you, or anyone else you heard talking to them
18 that day?

19 THE WITNESS: No.

20 THE COURT: You wouldn't?

21 THE WITNESS: No.

22 THE COURT: What would your version of it be on
23 that subject matter?

24 THE WITNESS: As to what -- not to worry about,
25 I don't say particularly law school, he went over that. He asked

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1 me about what would happen if he were charged to his charges
2 of being a lawyer, and I told him as far as I knew that
3 he would have to explain that even if he were charged he
4 would be a lawyer. I never said don't worry about it at
5 this point.
6

7 The thing that I think might have led them to
8 the feeling that it was a "don't worry about it" response
9 that we were giving is that when Mr. Friedman continually
10 went over the same things in response to signing a waiver
11 for this, a waiver for the arraignment, I think we said to
12 him at a point after awhile, "You are just going over and
13 over and over this, you know, I have explained it to you so
14 many times, you know. Will you stop going over it again?
15 This is it." Don't worry about it in that sense. Not in
16 the sense of saying, you know, as far as if you cooperate
17 don't worry about it, if you do this don't worry about it.

18 What he wanted was so much in terms of detail
19 from us over and over and over again we said, you know,
20 more or less that's enough.

21 THE COURT: The other thing is this. Was there
22 any explicit or implicit discussion about how to handle --
23 maybe I asked you this before but I am asking it again
24 if I have -- about what to do in case problems arose in
25 jurisdiction outside of your own jurisdiction?

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2 A I would only go on my assumption of what would
3 have been said. I don't recall. If that was discussed I
4 can only give an assumption of exactly what was said, and
5 in that case we would have said you either have to contact
6 us and we'll have to find out about it. If he has problems
7 in other jurisdictions that is what we want to know about.

8 THE COURT: Mr. Block.

9 CROSS EXAMINATION

10 BY MR. BLOCK:

11 Q Mr. Flynn, are you presently Assistant United
12 States Attorney in Newark?

13 A Yes, I am, sir.

14 Q How long have you been an Assistant United States
15 Attorney?

16 A Two and a half years.

17 Q How long?

18 A Two and a half years.

19 Q Are you regularly assigned to narcotics cases?

20 A Now I am, yes, sir.

21 Q And for how long a period -- I will withdraw it.
22 When this case was brought into you in September
23 of 1973, were you assigned to narcotics cases?

24 A Yes, I was.

25 Q Did you know Agent Smith prior to this occasion?

1 md/lr
2 A No, sir. That was the first time I had ever
3 met him.

4 Q Had you known Hall?

5 A No. I never met him b either, sir.

6 Q Smith was in charge of case?

7 A I imagine so. Yes, he was the case agent.

8 Q Have you handled a number of narcotics cases
9 since this episode a year ago?

10 A Yes, sir, I have.

11 Q You are testifying here solely and only from
12 recollection, is that correct?

13 A That's correct, sir.

14 Q You filed an affidavit in opposition to this
15 motion, isn't that correct?

16 A That's correct.

17 Q And did you discuss your affidavit with Mr.
18 Batchelder?

19 A Only in the most --

20 Q Do you remember the name of the assistant here
21 with whom you worked out the affidavit --

22 A Harry Batchelder.

23 Q -- that was submitted in opposition to the defen-
24 dant's motion?

25 A -- assistant I talked to was Harry Batchelder.

1

2

C That's what I asked.

3

A That is not what you asked. He spoke to me in

4

general terms about the case and asked me to prepare an

5

affidavit regarding what happened on September 25th.

6

Q So you drew the affidavit yourself?

7

A Yes, sir, I did.

8

Q I see. When you prepared that affidavit, did

9

you refer to any notes, memoranda, log books or anything

10

of that sort?

11

A No, sir, I don't believe I did. I had a file

12

in the case, and I think the thing I did refer to was the --

13

was a copy I had of the waiver made by the defendants.

14

Q That was the only piece of paper that you referred

15

to?

16

A Right. I took no notes during that interview.

17

Q I beg pardon?

18

A I took no notes during the interview we had

19

with Mr. and Mrs. Friedman.

20

Q And the paper you are referring to is this waiver

21

signed by Mr. Friedman and also an identical waiver signed

22

by Mrs. Friedman, and the one here is marked Defendant's

23

A, that's a paper you looked at?

24

A That's correct.

25

Q That's the only paper you looked at in prepari-

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2 the affidavit which you did for Mr. Batchelder, right?

3 A That's correct.

4 Q And the affidavit that you prepared in this
5 case was done on May 17, 1976. You can take my word for
6 it, it's on the affidavit.

7 A I do.

8 Q From September of 1975 until you received the
9 call from Mr. Batchelder, this case had sort of vanished
10 from your memory, hadn't it?

11 A No.

12 Q You recalled it?

13 A I recalled the case because of its connection
14 with another case that I had that was fairly current during
15 that period of time.

16 Q I see.

17 A And that would be United States versus Rudd.

18 Q And Rudd is one of the defendants in the New
19 York case as well?

20 A I believe he is. I have not seen the New York
21 indictment.

22 Q But as far as this conversation with Mr. Friedman,
23 that had gone out of your mind, but when Mr. Batchelder talked
24 to you about it you attempted to refresh your recollection,
25 looked at the deliver, and prepared the affidavit?

1 A I would say that the meeting with Mr. Friedman
2 didn't go out of my mind in the sense that I had lost
3 recollection of it, but I had no particular occasion to
4 deal with that meeting up until that time.
5

6 Q And you didn't make any notes at the time, you
7 said?

8 A No, sir, I didn't.

9 Q Did you ever read Mr. Friedman's affidavit in
10 support of his motion, or was it read to you?

11 A A copy was sent to me.

12 Q So that you are aware that in testifying as you
13 were doing you are clashing sharply with Mr. Friedman.
14 You are aware of that?

15 A Based on that affidavit, yes.

16 Q Let's talk about this. Mr. Smith comes in and
17 he has several people in tow on September 25, 1975.

18 A Right.

19 Q He has Mrs. Friedman, Mr. Friedman, and Jeffrey
20 Nach.

21 A That's correct.

22 Q And he comes in, you have never met him before,
23 but he says, "I'm the agent in charge of this case, and
24 this case involves a quantity of qualudes."

25 Q Does he tell you so as to orient you in

1 connection with the matter, and to aid in the preparation
2 of the complaint which you are proposing to file, in
3 accordance, you know, with routine procedure -- does he tell
4 you that an undercover agent by the name of Police Officer
5 Pollini had arranged a buy of qualudes from Mr. and Mrs.
6 Friedman and that Mr. Friedman had been arrested the night
7 before in the act of making delivery of these qualudes to
8 Mr. Pollini? Do you recall his telling you that?

9
10 A No.

11 Q Well, do you recall anything he told you about
12 the case?

13 A Yes, I do.

14 Q Will you tell us?

15 A I can recall him talk'ng about an undercover
16 agent being in the house of Mr. and Mrs. Friedman, of
17 them negotiating for the sale of the qualudes, of Mrs.
18 Friedman I think it was counting out how much it would be,
19 the price, and everything else, and then both participating
20 in negotiations.

21 THE COURT: Mr. Block, I really don't know that
22 the details of what he remembers -- are you doing this as an
23 exercise to determine how clearly he remembers things?

24 MR. BLOCK: That is one of the things, your Honor.

25 THE COURT: That can take an awful long time, and

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2 if you really feel that is necessary we will just have to
3 ask Mr. Flynn to come back.

4 MR. BLOCK: I think so. I can't cross examine
5 in a case like this in sixty seconds.

6 THE COURT: Don't say it in that tone of voice,
7 because you are the one who estimated how long this hearing
8 would take, and you told me two hours and it has taken
9 three hours.

10 MR. BLOCK: I always get stuck on those things.
11 I am sorry.

12 THE COURT: We're all sorry. Is your office in
13 Newark?

14 THE WITNESS: Yes.

15 THE COURT: It is not the worst place in the world
16 to have to come from. I had hoped to finish this today, and
17 I would keep going as long as necessary to get you out of
18 it here if I could, but I have to meet with judges.

19 THE WITNESS: The only thing is I don't know
20 when your Honor intends to carry this case over to.

21 THE COURT: I am not sure myself. I have asked
22 my clerk to check with my chambers to see what I could work
23 out.

24 How would Monday be for you?

25 THE WITNESS: I am second on a calendar for trial

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2 before Judge Gary in Camden. I don't know if it would go
3 or not.

4 THE COURT: When would you know?

5 THE WITNESS: Monday. And I can inform Mr. Buch-
6 wald as soon as I learn.

7 THE COURT: Let's go off the record to set a date.

8 (Discussion off the record)

9 THE COURT: We will go ahead Monday with as much
10 of the rest of the case as we can, and we will conclude with
11 Mr. Flynn's testimony when we can.

12 Mr. Buchwald, you keep in touch with Mr. Flynn
13 as to his availability.

14 MR. BLOCK: What time on Monday?

15 THE COURT: 10:15 in this room on Monday.

16 MR. BLOCK: I would like to ask the witness not
17 to talk to any of the agents about his testimony.

18 THE COURT: All right. Please don't.

19 Thank you. Will you advise the agents to come
20 back Monday?

21 MR. BUCHWALD: Yes.

22 THE COURT: I just want to have a word with all
23 of you before we go.

24 I am sure you are aware of Mr. Friedman, I know
25 how strained that is for the two of you, I am not sitting

1 md/lf

2 here weeping crocodile tears for you if you did the things
3 you are alleged to have done, even though if you go to
4 trial the jury is responsible and my knowing the facts
5 won't influence a jury trial.

6 What we are really trying to decide here is if these
7 charges should be dropped altogether, and if I decide they
8 should be, I will. I haven't decided that, because there
9 is a lot to decide. If they are not dropped altogether
10 all the other defendants have pleaded guilty. Mr. Friedman
11 is not required to do so but in dealing with the realities
12 of the situation I believe there is a possibility he might.

13 MR. BLOCK: Could I interrupt you a moment and
14 ask you to read a case?

15 THE COURT: Let me finish what I want to say.

16 MR. BLOCK: No, because this bears on what you
17 are talking about, and it is a case United States against
18 Alesi, and it says an appeal lies from a denial of a
19 motion to dismiss an indictment predicated on the alleged
20 breach --

21 THE COURT: Maybe they will appeal, but sooner or
22 later it has got to be decided.

23 MR. BLOCK: That's true.

24 THE COURT: I am not minimizing the difference
25 between having a matter dismissed and even having a suspended

1 md/lf

2 sentence. I only want them to know that unless Mr. --
3 and I don't want to pressure anybody in any way, I will tell
4 you this, and you can tell them, but unless Mr. Friedman's
5 record is such as to justify a distinction between treatment
6 in his case and treatment in the other defendants' cases
7 I am sure he knows every other defendant I believe except
8 Rudd who was sentenced to prison in New Jersey has received a
9 suspended sentence, and I don't want these people worrying about
10 the fact Mr. Friedman is going to go to prison, that is all.

11 MR. BLOCK: That's very lovely of you to say.

12 THE COURT: I say that clearly without any
13 commitment whatsoever because I don't know about the facts
14 of your life, but if this thing should go against you at
15 least you don't have to lie in bed nights worrying about
16 that, Mrs. Friedman. Do you understand?

17 MR. BLOCK: That's very nice of you to say, Judge.
18 Thank you.

19 MR. FRIEDMAN: Thank you, your Honor.
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21
22
23
24
25

1 UNITED STATES OF AMERICA

2 vs.

75 CRIM. 1098

3 LAWRENCE FRIEDMAN,

4 Defendant.

5
6
7 New York, New York
8 Sept. 27, 1976
9

10 (Trial resumed.)
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1 bjmgr 1

Friedman - Cross

2 THE COURT: You may proceed.

3 LAWRENCE FRIEDMAN, resumed

4 CROSS EXAMINATION

5 BY MR. BUCHWALD

6 Q Mr. Friedman, let me direct your attention to the
7 evening of the arrest, September 24, 1975, is that correct?

8 A Yes, sir.

9 Q At the time of your arrest you were with someone
10 who you later found out was Police Officer Pollini, is that
11 correct?

12 A Yes, sir.

13 Q At that time, just prior to the arrest, you thought
14 that he was a customer for the pills, the controlled
15 substances that he was bringing up?

16 A Yes, sir.

17 Q Am I correct that at that time you were bringing
18 him to a mailbox where the pills had been left?

19 A Yes, sir.

20 Q And that that involved some, how many, 10,000
21 pills?

22 A I think so, yes.

23 Q How much money were you expecting at that time for
24 the pills?

25 A I think \$15,000.

1 bjmgr 2

Friedman - Cross

2 Q Then you were arrested by Mr. Pollini how far
3 from this mailbox?

4 A Approximately--maybe 50 feet, 30 feet.

5 Q Did other officers assist Mr. Pollini in that
6 arrest?

7 A I don't understand your question.

8 Q In actually apprehending you.

9 THE COURT: Were you arrested by more than one
10 person?

11 THE WITNESS: To my knowledge Mr. Pollini was the
12 only one that put me under arrest.

13 Q And other officers came to the scene?

14 A Yes.

15 Q And Mr. Pollini withdrew his gun?

16 A Yes.

17 Q And searched you?

18 A Yes.

19 Q And you had a knife on you?

20 A No.

21 Q They let you keep the knife?

22 A No.

23 THE COURT: They did not discover it?

24 What's the story?

25 THE WITNESS: When I was searched my hands were

1 bjmgr 3

Friedman - Cross

2 handcuffed behind me and they made a search and didn't find
3 anything.

4 I didn't know I had anything on me. They put me
5 in this car and when I was sitting there I realized right
6 before I left that I was using that for a certain purpose.
7 It was a pocket knife. I realized that it was on my person.

8 THE COURT: An ordinary pocket knife?

9 THE WITNESS: I would think so. It wasn't a huge
10 thing. I realized it and I took it out of my back pocket.
11 There was an officer by the name of Rick. I don't know if
12 that's the correct name or not.

13 THE COURT: Let's not get bogged down with the
14 knife.

15 Q Had you had any discussion with Mr. Pollini
16 before you knew he was a police officer and before the arrest
17 about how the 10,000 Quaaludes had gotten into the mailbox
18 that you were taking him to?

19 A Yes.

20 Q What have you told him?

21 MR. BLOCK: What is the relevance of this?

22 MR. BUCHWALD: Some of the testimony here is that
23 they kept him 30 minutes at the scene before the arrest.
24 We would submit that that is absurd.

25 THE COURT: All right, the length of time held,

1 bjmgr 4

Friedman - Cross

2 go ahead.

3 Q What have you told Officer Pollini as to how the
4 Quaaludes had gotten into the mailbox?

5 A Someone was--I think Jeffrey Nach--was supposed
6 to put it underneath the mailbox. I was supposed to leave
7 them there.

8 Q You said somebody was supposed to put them in
9 the mailbox?

10 THE COURT: In or under?

11 THE WITNESS: Under.

12 THE COURT: If they were in the mailbox, I would
13 think they would be difficult to retrieve.

14 Q You testified on Thursday, I believe it was, that
15 after you were arrested it was some 30 minutes that you
16 were questioned at the scene of your arrest before being
17 placed into the automobile in which you were eventually
18 driven back to the Drug Enforcement Administration Office,
19 do you recall that testimony?

20 A No. I think I said it was--I don't remember if
21 I said it was 30 minutes before I got in the car or 30
22 minutes including the car, but what happened was it was at
23 least 30 to 35 minutes before we left the scene or about
24 an hour.

25 Q Do you recall any testimony that it was one half

1 bjmgr 5 Friedman - Cross

2 to one hour before you were placed in the car from the time
3 that you were arrested?

4 If there was such testimony, am I correct that
5 it was in error? It wasn't a half hour to an hour that you
6 were standing outside at the time of your arrest?

7 A It could have been 20 minutes, a half hour. I
8 was standing out there for a time.

9 THE COURT: Are you making any complaint about
10 the amount of time that he was outside before he got in the
11 car?

12 MR. BLOCK: No, sir.

13 THE COURT: O.K.

14 Q As you think back on it now, was it closer to
15 2 or 3 minutes?

16 A What was, sir?

17 Q That you were outside before being placed in the
18 car.

19 THE COURT: I have not yet been impressed by that
20 as being a major factor in this case. Mr. Block is laying
21 no stress on this.

22 MR. BUCHWALD: I understand that. I have a group
23 of agents and prosecutors who will be testifying and no
24 matter how much I would like to think this is a difference
25 in recollections and interpretations, based on the testimony

1 bjmgr 6 Friedman - Cross
2 before you there is just a complete difference in the
3 testimony. It is black and white down the line between
4 the defendant and his wife and these people.

5 Your Honor is going to have to determine,
6 unfortunately I think, the real question of credibility as,
7 perhaps, to different interpretations.

8 THE COURT: O.K.

9 Q However long it was, eventually you were placed
10 back in the automobile, is that correct?

11 A Yes, sir.

12 Q When you were placed in the automobile, were you
13 advised of your constitutional rights? Is it your testimony
14 that you were never advised of your constitutional rights
15 until the time that you reached the Drug Enforcement
16 Administration office?

17 A Yes, sir.

18 Q And you are positive of that?

19 A Yes, sir.

20 Q And this is not something that in the anxiety of
21 the situation or the nervousness you might have forgotten?

22 A No, sir.

23 Q Because as a law student you were aware that you
24 should be advised of your constitutional rights so your ears
25 were open to whether or not you would be advised, is

1 bjmgr 7 Friedman - Cross

2 that correct?

3 A If I was advised I would have remembered.

4 THE COURT: Why are you so sure of that?

5 THE WITNESS: Because when I was advised it was
6 just not a man asking me questions. He took out a piece of
7 paper and read from it. I remember that vividly.

8 Q Am I correct, that prior to the time you were
9 advised of your constitutional rights, you, in fact, made
10 no statement?

11 A I don't understand your question.

12 Q You did not give up your source, you did not
13 mention Mr. Nach's name prior to the time you were advised
14 of your constitutional rights.

15 A Correct.

16 Q You did not tell the officers "I'm guilty, I'm
17 sorry" prior to your constitutional rights?

18 THE COURT: Did you make any statement against
19 your own interest or make any statement at all?

20 A I remember on direct examination I stated that I
21 made many statements.

22 THE COURT: Like what?

23 THE WITNESS: "What's going on? I want to speak
24 to an attorney."

25 THE COURT: I do not know if you call that a

1 bjmgr 8 Friedman - Cross

2 statement or a question.

3 Did you give them any information about the deal?

4 THE WITNESS: No.

5 Q I believe you testified on Thursday that once you
6 were in the automobile but prior to the time of the
7 automobile starting back towards New York, you were told by
8 one or more of the agents that your wife might be kept
9 overnight at Riker's Island and there was the possibility
10 that she would be raped by lesbians at Riker's Island.

11 Do you recall that?

12 A I don't know if I said "raped by lesbians" but
13 lesbians are there and it is not a place they would want
14 their wives to be, they said.

15 THE COURT: This was where?

16 THE WITNESS: Outside the car and inside the
17 car.

18 Q It was during the period of time when the car was
19 still stationary as opposed to the time that the car was
20 driving you into New York?

21 A What was?

22 Q This conversation about the lesbians at Riker's
23 Island.

24 A This went on for a considerable amount of time.

25 THE COURT: Was it before the car started to

1 bjmr 9

Friedman - Cross

2 move or not or both?

3 THE WITNESS: I would say yes.

4 THE COURT: Yes, both?

5 THE WITNESS: It was while I was outside the car
6 and inside the car.

7 I honestly don't recollect if it was while the
8 car was moving.

9 Q At the time you were outside the car which agent
10 was telling you anything about lesbians at Riker's Island?

11 A To my best recollection there were many, many
12 people and I didn't know who were agents at the time and
13 who weren't.

14 There were agents on that day that I had never
15 seen since so I can't say who per se said it.

16 Q Who was physically present and so close to you
17 that you assumed that they must have heard the statements at
18 the time the statements were made to you?

19 MR. BLOCK: Who he subsequently came to know?

20 Q If at any time you have difficulty understanding
21 any of my questions, speak up.

22 THE COURT: Do you understand the question?

23 THE WITNESS: No, sir.

24 THE COURT: The question was now that you know
25 who was there can you tell us who was close enough to you

1 bjmgr 10

Friedman - Cross

2 to have heard it, if the statement was made?

3 THE WITNESS: They weren't whispered. They were
4 screamed at me so I would think anyone who was around me.

5 THE COURT: Who was there?

6 THE WITNESS: Police from New York City.

7 THE COURT: Do you know the names of any of them?

8 THE WITNESS: I think Pollini was there.

9 Mr. Giovanniello. I don't know. There were just a lot of
10 people there.

11 THE COURT: Anyone close to you should have heard
12 it, is that right?

13 THE WITNESS: They screamed at me.

14 Q Which federal officers were there at the time that
15 the conversation concerning lesbians at Piker's Island was
16 going on?

17 A I think Mr. Hall was with me. He might not have
18 been next to me because there were arguments going on as to
19 who was going to make the arrest or something. I know
20 Mr. Hall was in the car when we drove back. He might not
21 have been standing next to me, but, as I said before, it was
22 being yelled. You don't have to be standing right next to
23 me to me to have heard it.

24 Q Do you remember any of the officers next to you
25 or who made the statements of referral to you?

1 bjmgr 11

Friedman - Cross

2

MR. BLOCK: I think he answered that before.

3

THE COURT: Do you remember who yelled it at you?

4

Do you remember who yelled it?

5

THE WITNESS: I think Mr. Hall, but he was not the

6

only one. There were many people who did.

7

Q Do you remember any of the others?

8

A Their names?

9

Q Yes.

10

A I don't know most of them.

11

Q Do you know of any of the people you now know or

12

their nicknames that you now know?

13

A The only one that I can really recall is

14

Mr. Hall and--

15

THE COURT: Are you telling us Mr. Hall was one

16

of the people that said or yelled this or heard it or both?

17

THE WITNESS: Both. I'm sure he heard it. He

18

might not have been the one that said about the lesbians

19

but he also told me that my wife was going to Riker's

20

Island unless I cooperated right then and there.

21

Q Let's focus in, if we can, on this.

22

I am particularly concerned about the "lesbian"

23

comment which seems to have--

24

THE COURT: I do not know that you need to

25

because it seems to me that everybody knows these things

1 bjmgr 12

Friedman - Cross

2 happen in every prison in the United States or jail which
3 does not mean that I do not think that they are important,
4 but it is implicit that when you say "Your wife is going
5 to go to Riker's Island," that that is one implied threat
6 itself.

7 Q Was Scotty Gray there?

8 A Was he where?

9 Q Did he make a statement to you?

10 A I honestly can't say.

11 Q Do you recall testifying last Thursday that it
12 was the agent that you knew as Scotty that told you that
13 your wife would be taken to Riker's Island and young women
14 should not go there because they had lesbians there?

15 A Like I said, I can't say who said it because
16 there were so many people who were saying it and it was so
17 obvious.

18 Q If on Thursday you testified that it was the
19 agent you knew as Scotty, now you are not sure of that,
20 is that correct?

21 You did not mean to be definite if you were
22 definite last Thursday, is that correct?

23 A It is not that I did not mean to be definite.

24 THE COURT: Can you remember or can't you?

25 Mr. Buchwald is properly asking you.

1 bjmgr 13

Friedman - Cross

2 Mr. Friedman, I cannot recall, frankly, but
3 Mr. Duchwald says this. I am ready to assume for the moment
4 that you said that Scotty was one of the people there at
5 that time. Now, that was specific. Can you remember that
6 specifically now or not?

7 THE WITNESS: I remember that he said to me--you
8 see, the thing that he said was that my wife would go to
9 Riker's Island, but it became a popular thing and I don't
10 know who started it.

11 THE COURT: We are asking you who said it. If
12 you can remember anybody who said it, tell me.

13 THE WITNESS: The New York City police said it.

14 THE COURT: You do not know their names?

15 THE WITNESS: No, your Honor.

16 Q Was it Officer Pollini, the undercover agent?

17 A I don't think he said a word to me after "You
18 are under arrest."

19 Q Did Detective Giovannello?

20 A I don't know, sir.

21 Q Were there any other New York City police officers
22 there other than those?

23 A Yes, sir.

24 Q Do you remember their names?

25 A One was a man by the name of Rick.

1 bjmgr 14

Friedman - Cross

2 THE COURT: Of what?

3 THE WITNESS: Of Rick.

4 Q Was it A.M.?

5 A It might have been. There were people there.

6 Q Once you got in the automobile in Clifton and
7 that was an automobile which Agent Hall drove, is that
8 correct, Agent Hall?

9 A I don't think he drove. I think he sat next to
10 the driver.

11 Q But he was one of the people in the automobile on
12 the way back with you to the Drug Enforcement Administration
13 headquarters in New York?

14 A Yes, sir.

15 Q How long were you in the automobile before you
16 started back to New York?

17 A About 20 or 40 minutes.

18 Q That's before the car started and you actually
19 started moving to New York?

20 A Yes. What was the question? How long?

21 THE COURT: Was it before you started back to
22 New York?

23 THE WITNESS: Correct.

24 Q There came a time that you arrived at DEA
25 headquarters and do you recall how long the trip was from

1 Djmgr 15

Friedman - Cross

2 once you started from Clifton and got to headquarters at
3 57th Street in New York?

4 A Approximately 30 minutes.

5 Q Did you go upstairs with the agents to the
6 Drug Enforcement Administration office?

7 A Yes.

8 Q Were you handcuffed at the time?

9 A Yes.

10 Q When you got upstairs what was the first thing
11 you saw when you got upstairs?

12 A I was let into a room and at the opposite end
13 of the room my wife was sitting there.

14 THE COURT: Sitting?

15 THE WITNESS: Like I am, being questioned and
16 she was crying.

17 Q Was she handcuffed?

18 A I don't think so but I can't say for sure.

19 THE COURT: Did you ever see her in handcuffs?

20 THE WITNESS: No.

21 THE COURT: Well, she was not in handcuffs, was
22 she?

23 THE WITNESS: She might have been but I didn't
24 see her. I wasn't sure because she was sitting down. I
25 doubt it.

1 bjmgr 16

friedman - Cross

2 THE COURT: You mean her hands were below the
3 table, something like they are now?

4 THE WITNESS: Yes.

5 Q On how many separate occasions did you see your
6 wife crying at DEA headquarters?

7 A Well, every time I saw her.

8 Q How often was that that you saw her?

9 A Until we were put together in the same room
10 maybe about 3 to 5 times.

11 Q How often would you see her?

12 A When I first walked--it would have been once
13 and a ten minute lapse or fifteen minute lapse.

14 THE COURT: I do not understand how you saw each
15 other or didn't see each other until you had a conversation
16 together.

17 THE WITNESS: Because first I was brought in
18 and given my rights--excuse me. First I was brought in
19 and saw my wife and I was taken into an anteroom where
20 there was an anteholding cell and transferred to another
21 and the first cell I wasn't near the door and I was
22 given my rights by Scotty and put into a different cell.

23 The door was opened and I could see her
24 occasionally.

25 COURT: Did she move back and forth or did

1 bjmgr 17 Friedman - Cross

2 you move?

3 THE WITNESS: No. As agents were going--if you
4 open that door she was right in line.

5 THE COURT: And occasionally that door opened
6 and you saw her?

7 THE WITNESS: Right, and another time I was
8 brought in and I kept saying, "I want to speak to my wife."
9 I said that lots of times.

10 Q Was there an agent who told you in words or
11 substance, "We are going to call your law school and tell
12 them you have been arrested"?

13 A Yes.

14 Q Which agent was that?

15 A Mr. Hall.

16 Q There came a time when you spoke with you wife,
17 is that correct?

18 A Yes, sir.

19 Q Where you and she were next to each other?

20 A Correct.

21 Q During the course of that conversation did your
22 wife tell you that she had already given the agents the
23 name Mr. Nach?

24 A No.

25 Q Was it your understanding that she had not as of

1 bjmgr 18

Friedman - Cross

2 that time cooperated with the agents.

3 A Correct.

4 Q Am I correct that at least during the course of
5 the evening on September 24, September 25, in view of the
6 statements about lesbians and the statements about calling
7 your law school and the refusal to listen to you when you
8 said that you wanted a lawyer and not advising you of your
9 rights until you were back in the Federal Drug Enforcement
10 office, that you did not like the federal agents who were
11 with you and who arrested you?

12 THE COURT: The answer is perfectly obvious. I
13 don't know whether you like them, did you?

14 THE WITNESS: It wasn't a question of like or
15 dislike. I was fearful of them.

16 Q You did not think much of them as the way officers
17 should act, did you?

18 MR. BLOCK: I object, your Honor, to that.

19 THE COURT: Sustained.

20 Q Is it your testimony that a week later you were
21 very upset and you called up Mr. Flynn and told him that
22 you wanted to work with the federal agents and you did not
23 want to be cooperating with the police officers. Is that
24 right?

25 A

1 bjmgr 19 Friedman - Cross

2 Q Did you have a discussion with Mr. Flynn about
3 wanting to work with federal officers, your understanding
4 being that you were to work with federal officers and not
5 with New York City police?

6 A Could you rephrase that, please?

7 Q Did you call Mr. Flynn about a week after your
8 arrest?

9 A I called him--I saw him on a Thursday and I called
10 him on a Monday.

11 THE COURT: What did you call him about?

12 THE WITNESS: I was contacted by the Brooklyn
13 police and they said "Are you ready to start working with us?"

14 It was my understanding from the previous meetings
15 that I was to work with the federal agents who had worked
16 with the New York City police.

17 THE COURT: And the New York City police were
18 directing you?

19 THE WITNESS: Right.

20 THE COURT: Did you talk to him about that?

21 THE WITNESS: I didn't know what to do.

22 THE COURT: What did he say?

23 THE WITNESS: He told me to work with the federal
24 agents.

25 Q and Smith he told you to work with?

1 bjmgr 20

Friedman - Cross

2 A He said to the federal agents and I took it to
3 mean Hall, Smith and Scotty.

4 Q Did you say anything to Mr. Flynn about the
5 conduct of the federal agents?

6 Let me direct your attention to the morning of
7 the 25th when you spoke to Flynn in the U.S. Attorney's
8 office. Did you tell him anything about the conduct of Hall,
9 Smith, Scotty or Giovanniello or any of the federal officers
10 or state officers who arrested you and your wife?

11 A I don't think so.

12 Q During the privacy of the telephone call the
13 following Monday when you spoke to Mr. Flynn alone on the
14 phone and there was no one around you, did you mention
15 anything to Mr. Flynn about the conduct of the federal or
16 state officers who arrested you and your wife?

17 A Just that I did not understand what to do.

18 THE COURT: About their arresting you and your
19 wife, did you say anything about the conduct in connection
20 with that?

21 I assume you mean, Mr. Buchwald, about arrest.

22 THE WITNESS: No, but can I explain that?

23 Q Yes.

24 THE COURT: Go ahead.

25 A Well, the agents led me to believe that--they

1 Dwyer 21

Friedman - Cross

2 sort of got me on their side so I did not feel that was an
3 issue any longer because they kept saying "If you cooperate
4 you will be our friend in two weeks," a friend of the agents.
5 So I just looked for as much as I could do to help.

6 Q You had faith in them?

7 MR. BLOCK: As of what time?

8 MR. DUCHWALD: As of whatever this is that he is
9 talking about.

10 Q You had faith in the assurances that you might
11 be their friend?

12 A Yes.

13 Q There came a time, did there not, that you were
14 arrested on October 8, 1975, in Brooklyn, after being sort
15 of duped into going into Brooklyn, is that correct?

16 A Yes.

17 Q And you spoke at that time with Assistant District
18 Attorney Taub?

19 A Correct.

20 Q Who was the Chief or Assistant Chief or had some
21 status with the District Attorney's office of the Narcotics
22 Bureau in Brooklyn?

23 A Correct.

24 Q In your discussion with Mr. Taub, did you ever
25 tell Mr. Taub that Assistant United States Attorney Flynn

1 bjmgr 22

Friedman - Cross

2 had promised you more or less that you would not be prosecuted
3 if you cooperated?

4 A Yes.

5 Q You have a distinct and vivid recollection of
6 having told Taub that Flynn made a promise of nonprosecution
7 to you?

8 A The answer to that is no. But I told him that I
9 did not understand what was going on, why I was being
10 arrested because I was told that--I asked if they got a call
11 from Mr. Flynn and they told me no. I said that I had
12 supposed that to have taken place. They said they never got
13 it. They said it was jealousy and they said it was jealousy
14 between the federal agents and the New York City police.

15 Q The question is did you tell Mr. Taub that
16 Mr. Flynn had promised you or quasi-promised you that you
17 would not be prosecuted for anything related to the offense
18 of September 24, 1975, provided that you cooperated with
19 the government?

20 MR. BLOCK: I object to the form of the question.
21 He said "quasi-promise" and the testimony is that he got a
22 flat promise.

23 THE COURT: I will allow the question. It seems
24 to me it is more favorable to the plaintiff to imply that he
25 got a quasi promise.

bjmjr 23

Friedman - Cross

Do you understand the question?

THE WITNESS: Can you explain that?

THE COURT: Did you tell this fellow that you got a promise from Flynn or something like a promise from Flynn that you would never be prosecuted?

THE WITNESS: I asked him.

THE COURT: Did you tell him that you had been given a promise?

THE WITNESS: Yes.

THE COURT: You have told us that you asked him if he got a phone call and we are asking if you told him that you had gotten a promise. Did you?

THE WITNESS: I really can't answer that yes or no, your Honor.

THE COURT: Why can't you? You can say, "No, I didn't tell him that but I told him something else."

THE WITNESS: That's the way I will answer it.

THE COURT: You did not tell him that you got a promise?

THE WITNESS: Yes. I told him I was promised but I did not explain to him the entire situation.

THE COURT: What did you tell him?

THE WITNESS: I told him that when I was arrested in New Jersey what had happened and he told me that.

1 bjmgr 24

Friedman - Cross

2 THE COURT: What did you say to him? Repeat the
3 words as well as you can remember.

4 THE WITNESS: When he told me I was indicted,
5 I told him that that was not going to happen and there was
6 going to be cooperation with the New York City police and
7 the federal agents and the District Attorneys.

8 He said to me that there were no deals and they
9 did not get any phone calls from Mr. Flynn or anyone and
10 that this was strictly a Brooklyn matter.

11 THE COURT: Incidentally, what has happened to
12 that case?

13 MR. BLOCK: It is pending in Brooklyn, your Honor.
14 I understand that it is on for tomorrow. Mr. Friedman is
15 represented by some lawyer whom I have never spoken to.

16 THE COURT: It is on for what purpose?

17 MR. BLOCK: It is just a continuance. It is set
18 for that day to the best of my knowledge.

19 THE COURT: Is the same question being litigated
20 there as here?

21 MR. BLOCK: No, not to my knowledge. I expect
22 to go out there tomorrow even though I don't represent
23 Mr. Friedman in the Brooklyn court and acquaint the lawyer
24 there with this situation so that he knows about it first
25 hand from me. We will see what happens in Brooklyn. I

1 bjmgr 25

Friedman - Cross

2 don't know.

3 THE COURT: Thank you. Go ahead, Mr. Buchwald.

4 Q Am I correct that between September 24 and
5 October 8 or 9 when you were arrested in Brooklyn, you had
6 not cooperated with the authorities other than the business
7 about Mr. Nach?

8 THE COURT: That question is ambiguous. That may
9 mean refused to cooperate or simply had not yet affirmatively
10 cooperated.

11 Q Could you explain what, if anything, you had
12 done?

13 THE COURT: Ask him what cooperation occurred.

14 Q What cooperation occurred between your
15 conversation on the morning of September 25 and the time
16 of your arrest in Brooklyn on October 8, 1975?

17 A Just an affirmance that anything I was asked to
18 do I would cooperate in.

19 THE COURT: But you were not asked to do anything,
20 is that correct?

21 THE WITNESS: Correct, except for Mr. Nach's
22 name with my wife and they could not get Mr. Nach to
23 give his source and they told me--they took me out of my
24 cell and called me into the room that he was in and this
25 was discussed with me beforehand that I would help and I was

1 bjmgr 26

Friedman - Cross

2 in the room with Mr. Nach assuring him that he should
3 cooperate and he should help and Mr. Nach told his source.

4 Q The night of October 24 before you went to Flynn's
5 office on the 23rd, is that right?

6 A Right.

7 Q Did you encourage Nach to cooperate with the
8 authorities on that evening?

9 A Yes.

10 Q And you were also aware on the 25th that Nach
11 was arraigned?

12 A I was told so, yes.

13 Q When you were arrested, on January 8, 1976, on
14 this indictment here--

15 MR. BLOCK: You have the date wrong. It was
16 January of 1976.

17 THE COURT: That is what he said.

18 MR. BUCHWALD: I think it is January 8.

19 THE COURT: Whatever it is.

20 Q You were eventually brought here to the United
21 States Attorney's office in the annex next to the courthouse,
22 is that right?

23 A I don't know if it is exactly the courthouse,
24 but I was taken by a federal agent.

25 Q And you spoke at that time to Assistant United

1 bjmgr 27 Friedman - Cross

2 States Attorney John Flannery and you saw Mr. Flynn briefly
3 on Thursday afternoon?

4 A Right.

5 Q The same Assistant United States Attorney?

6 A Yes.

7 Q And were you interviewed by Mr. Flannery?

8 A Yes.

9 Q And you spent a half hour or so with him or so?

10 A I think so.

11 Q During your discussion with Mr. Flannery did you
12 mention to him that Mr. Flynn in Newark had told you in
13 words or substance that you would not be prosecuted for
14 anything relating to the offense that you were arrested for
15 on September 24 provided that you cooperated?

16 A No. But I can explain that.

17 Q Let me ask a few other questions and I am sure
18 you will explain whether or not I tell you specifically to
19 explain.

20 Isn't it a fact that during that entire interview
21 with Mr. Flannery that you never mentioned to him anything
22 about any discussion that you had with Mr. Flynn?

23 A I don't think I used Mr. Flynn's name.

24 Q Isn't it a fact that during the course of your
25 discussion with Mr. Flannery you never mentioned to him

1 bjmgr 28

Friedman - Cross

2 anything that any Assistant United States Attorney in Newark
3 had ever told you?

4 A Told me what?

5 Q You never mentioned to Flannery about the
6 discussion by any Assistant United States Attorney in Newark.

7 A No, but I told him that I thought nothing was
8 going to happen and why is this happening?

9 Q Did you tell Mr. Flannery that you were willing
10 to cooperate?

11 A Yes.

12 Q Did you express concern to him about the effect
13 on your law career that an indictment would have?

14 A I think so.

15 Q Did Mr. Flannery explain to you that pleading to
16 a conspiracy, a felony in federal law was considered a
17 misdemeanor under New York State law and, therefore, in and
18 of itself if you were trying trying to get into the New
19 York Bar, it would not in and of itself be an automatic
20 disbarment?

21 A I think he did.

22 Q Did he tell you, however, that he was not
23 familiar with the particulars of the Jersey law?

24 A I don't recall that.

25 Q Did he tell you that nonetheless in the instance

1 bjmgr 29 Friedman - Cross
2 of someone applying for the Bar as opposed to someone
3 already a member of the Bar that the Character Committee
4 very possibly would consider a conviction a bar to admission?

5 A Yes.

6 Q Did you ask him if there was a chance that
7 perhaps you would not have to plead to the charge in this
8 indictment in this case?

9 A I really don't recall. I don't know.

10 Q Do you have any recollection of Mr. Flannery
11 telling you that?

12 A No, it was not a possibility.

13 Q A possibility, that there would be no way in
14 which you would not be required to plead to a charge in this
15 case or some other charge, but a charge in this courthouse
16 arising out of this indictment?

17 THE COURT: I take it either guilty or not guilty.

18 Q Did you discuss with him the possibility of
19 pleading guilty and cooperating?

20 A No.

21 Q You never discussed that at all?

22 A Not pleading guilty and cooperating. Maybe I
23 don't understand your question.

24 Q Did Mr. Flannery ask you if you had ever been
25 arrested before?

26 A Yes.

1 bjngr 30

Friedman - Cross

2 Q Did you tell him that you had not been arrested
3 before?

4 A Yes.

5 Q Was that because you were afraid that he might
6 feel worse about you if you had been arrested on a prior
7 occasion?

8 A No.

9 Q He might feel more hostile toward you?

10 A No.

11 Q You did not tell him about the prior arrest?

12 A No.

13 THE COURT: Why?

14 THE WITNESS: Because when Mr. Flannery was
15 questioning me I was confused as to what he meant by "Were
16 you arrested before?"

17 But I asked him what he meant by that because in
18 my mind I thought that he meant or that he knew everything
19 that had happened and everything was in front of him in his
20 papers and when I was in Mr. Flynn's office. I just thought
21 he was talking about this specific case. When I was in
22 Mr. Flynn's office I was told that I was no longer under
23 arrest and that I could leave, and that is how they said
24 "Goodbye."

25 THE COURT: You are a law student and you think

1 bjmgr 31

Friedman - Cross

2 that because you are allowed to leave after you have been
3 arrested that you are not arrested? You cannot undo
4 once you are arrested. You are arrested.

5 THE WITNESS: This is what I was told.

6 THE COURT: I find it hard to believe that you
7 believed that.

8 THE WITNESS: Well, I didn't logically sit down
9 and think about it, but this was told to me.

10 THE COURT: They told you that because you could
11 go home that that means you never were arrested?

12 THE WITNESS: No, because of the discussions in
13 Mr. Flynn's office and that I was no longer considered under
14 arrest.

15 THE COURT: I did not say "under arrest any
16 longer." People do not remain under arrest for their lives.

17 THE WITNESS: I asked if I'm not under arrest can
18 I have my pictures and fingerprints because I was afraid of
19 that. Agent Smith said, "Well, we could give it back to
20 you but there is no point because we can get it again."
21 It was left up in the air and that's the way I answered the
22 question.

23 Q It is your understanding that you were not arrested
24 in Brooklyn either on October 8, 1975?

25 A Of course I was, but I was not answering the

1 bjmgr 32 Friedman - Cross
2 question in that manner. I don't think I intentionally lied
3 to Mr. Flannery.

4 THE COURT: If you did not intentionally lie
5 you must be awfully stupid.

6 THE WITNESS: Your Honor, I did not understand
7 at that time. I asked him, "You mean about this?"
8 That's what I said, "Do you mean about this?" Because he
9 was asking me a whole lot of questions and he said, "Yes,"
10 and I said, "No."

11 MR. BUCHWALD: May we have this marked as
12 Government's Exhibit 2 for purposes of this hearing?

13 (Government's Exhibit 2 was marked for
14 identification.)

15 THE COURT: I notice that somebody has come into
16 the room. It is a gentleman that attends many of these
17 trials and has no interest in this one in particular.

18 Somebody has come in to listen to this case, but
19 one of the gentlemen who is a habitue of the courthouse.
20 I do not think it makes any difference.

21 Let me show you the Government's Exhibit 2 for
22 identification. It consists of two and a half pages, an
23 affidavit of Mr. Flannery's.

24 Would you read that to yourself and if there is
25 anything in there which is incorrect, would you indicate

1 bjmgr 33

Friedman - Cross

2 what it is that you believe is incorrect?

3 THE COURT: Whose affidavit is this?

4 MR. BUCHWALD: No, your Honor, we were going
5 to submit it and I want to see if Mr. Block will object.
6 If he does object we ask that it be an offer of proof so
7 Mr. Flannery will be called next Monday. He is on vacation.

8 THE COURT: I can't believe the amount of time
9 this hearing is taking. Believe me, this is just as much
10 messed up by the government. Why these cannot be done in
11 the presence of attorneys so we know what happened instead
12 of guessing.

13 MR. BLOCK: If your Honor please, as far as this
14 witness is concerned, I object to it. I don't think this is
15 a proper way to proceed to just show him an affidavit to
16 comment on it.

17 THE COURT: Why don't you ask him about the
18 contents.

19 MR. BUCHWALD: I think I have reviewed some of it.

20 THE COURT: Have you read the affidavit?

21 THE WITNESS: Yes, your Honor.

22 THE COURT: Do you understand the question that
23 Mr. Buchwald asked you?

24 THE WITNESS: He asked me if there is anything I
25 disagree with.

1 bjmgr 34

2 THE COURT: Yes.

3 THE WITNESS: Yes.

4 THE COURT: Do you want to specify?

5 A On page 2, "Mr. Friedman visibly upset about this
6 and asked me if there was a chance he would not have to plead
7 to the charge in the indictment and I flatly said no." I
8 said to him, "What about my cooperation and what about
9 cooperating? Would the charge be reduced to a misdemeanor?"
10 Because before this time I did not realize that if I had a
11 misdemeanor on my record there was still a possibility that
12 I could pass the Character Committee of the American Bar
13 Association or New York Bar or New Jersey. I found out if
14 I had a misdemeanor as compared to a felony that I would be
15 able to do so and I wanted to know if this could be reduced
16 if I pleaded and cooperated to a misdemeanor. He said that
17 he did not know and it is up to him.

18 THE COURT: That is a different point. You might
19 have talked about this too.

20 THE WITNESS: "Mr. Friedman visibly upset about
21 this and then asked me if there was a chance he would not
22 have to plead to the charge in the indictment." I thought
23 it was a misdemeanor.

24 Q You have a clear and vivid recollection of the
25 discussion with Mr. Plannery initiated by yourself trying

1 bjmgr 35 Friedman - Cross

2 to find out whether or not you might be able to plead to a
3 misdemeanor as opposed to a felony?

4 A I think so.

5 THE COURT: Are there any other major points that
6 you want to make in regard to Mr. Flannery's affidavit?

7 THE WITNESS: Just that he said that Jeffery Nach
8 was a childhood friend. He wasn't a childhood friend.

9 THE COURT: Mr. Friedman says that the affidavit
10 is in error in that Jeffery Nach was not a childhood friend.
11 He said that he had not been a childhood friend.

12 How long had you known Nach?

13 THE WITNESS: About a year or two.

14 Q Did you ever say to Mr. Flannery that Mr. Nach
15 was a childhood friend of your wife?

16 A Yes.

17 THE COURT: Was that true?

18 THE WITNESS: Yes.

19 MR. BUCHWALD: Your Honor, we would offer the
20 affidavit of Mr. Flannery at this time.

21 MR. BLOCK: I object to it.

22 THE COURT: Sustained. I don't want to do it
23 by affidavit. Maybe what Mr. Flannery has to say is
24 critical and we have pretty well explored that.

25 Q Mr. Friedman, in your affidavit submitted in

1 bjrgr 36

Friedman - Cross

2 connection with this motion, you said, "After I had advised
3 Mr. Flynn that I was a law student and that in response to
4 his question I would be willing to assist the agents to make
5 cases against the people I knew to be dealers in drugs,"
6 page 2 of Mr. Friedman's affidavit and under the section
7 of Promise Not To Prosecute, "Mr. Flynn told me repeatedly
8 that I would not be prosecuted for anything related in any
9 way to the offense for which I had been arrested in exchange
10 for the cooperation."

11 Sir, is it your testimony now that Mr. Flynn
12 never made an outright unqualified promise of the sort
13 indicated here in the affidavit?

14 A May I see the affidavit? I really don't
15 understand your question.

16 THE COURT: Are you asking him whether he is now
17 testifying differently from his affidavit?

18 MR. BUCHWALD: Yes, your Honor.

19 THE WITNESS: May I comment on that?

20 THE COURT: Yes.

21 THE WITNESS: Well, when I went to see Mr. Block,
22 Mr. Block drew this up.

23 THE COURT: We know Mr. Block drew it up but
24 did you believe it to be the correct statement of facts
25 when you signed it and swore to it?

1 bjmgr 37

Friedman - Cross

2 THE WITNESS: Yes, I don't see anything that is--

3 THE COURT: Is there any difference in your
4 testimony now?

5 THE WITNESS: Well, Mr. Buchwald asked if
6 Mr. Flynn made a voluntary statement.

7 THE COURT: No. If he made a direct promise
8 or the equiv ent of it. You do not use the word "promise"
9 here but you say that he told you repeatedly, is that your
10 testimony?

11 THE WITNESS: Yes, many times.

12 Q Did you ask him at any time why Defendant's
13 Exhibit A, the statement signed by yourself on September 25,
14 was any less equivocal than his statements to you?

15 THE COURT: I did not understand that question.
16 I am sure the witness does not understand it.

17 He signed a waiver, is that what you are talking
18 about?

19 MR. BUCHWALD: A waiver, your Honor.

20 THE COURT: What is your question? He signed
21 a waiver saying he agreed not to be arraigned in a hurry?

22 MR. BUCHWALD: Until such time as the United
23 States Attorneys shall have had the time, opportunity to
24 evaluate the case.

25 Q You ask Mr. Flynn why the waiver could not

1 bjngr 38

Friedman - Cross

2 be as unequivocal as you indicated his statements were to
3 you?

4 THE COURT: You want to say did you ask Mr. Flynn
5 why it did not say that you would never be prosecuted in
6 that paper you signed.

7 A Yes. Sec, originally he gave me, like a lawyer's
8 pad, a blank lawyer's pad and asked me to write what I
9 believed to be the agreement because there were many things
10 that were promised to me and before I had a chance, just
11 about when it is about when it is about to begin he said
12 something about his secretary not being in.

13 THE COURT: You have told us about that before.

14 THE WITNESS: And I just understood it to mean--

15 THE COURT: The question is whether when you
16 actually were given the paper and you looked at it and saw
17 what it said, whether you said to Mr. Flynn, "Why doesn't
18 that say that I will never be prosecuted?"

19 THE WITNESS: He explained to me before, and I
20 don't think I asked that question, but he explained to me
21 before that this was like an embodiment of our agreement.

22 THE COURT: When you read it did you think it
23 was an embodiment of the agreement?

24 THE WITNESS: I told your Honor Thursday that
25 I did not know what "deferred prosecution" was. Mr. Flynn

1 bjmgr 39

Friedman - Cross

2 tried to explain it to me, but I did not know what it was.

3 Under his explanation I took it to mean that if I
4 cooperated with him and through the agents that he would
5 not prosecute in this case. In other words, he was going
6 to waive my being arraigned and hold everything back and to
7 see if I cooperated fully and if I did charges were not going
8 to be brought. That's my total understanding of what
9 happened.

10 THE COURT: At the time you signed this waiver
11 you thought that it meant that if you cooperated fully you
12 would not be prosecuted?

13 THE WITNESS: Yes, your Honor.

14 Q For misdemeanors or felonies?

15 A For anything.

16 MR. BUCHWALD: I have no further questions.

17 MR. BLOCK: I have a further redirect examination,
18 your Honor.

19 THE COURT: The waiver is Defendant's Exhibit A?

20 MR. BLOCK: Yes.

21 MR. BUCHWALD: I have a few more questions. At
22 any time did you see your wife smiling or laughing in the
23 Drug Enforcement Administration headquarters?

24 A Not to my knowledge.

25 Q At what point or when did they take your

1 bjmgr 40

Friedman - Cross-Redirect

2 photographs and fingerprints and asked you the personal
3 questions in relation to the time that you arrived at the
4 Drug Enforcement Administration headquarters?

5 A Within an hour of me being in there.

6 Q Was it before or after the time that you and
7 your wife spoke together?

8 A It was after the New York City police had spoken
9 to me. They called me aside while it was being done and it
10 was done. I think before we cooperated.

11 Q Was it before you spoke with your wife that you
12 were fingerprinted and photographed or after you spoke with
13 your wife that you were fingerprinted and photographed?

14 A I think before.

15 MR. BUCHWALD: I have no further questions.

16 THE COURT: Go ahead, Mr. Block.

17 REDIRECT EXAMINATION

18 BY MR. BLOCK

19 Q You were talking about your conversation with
20 Mr. Flannery. Did you testify here in answer to
21 Mr. Buchwald's questions that you told Mr. Flannery, "Why
22 is this happening? I understood nothing would happen."

23 Did you say something along those lines to
24 Mr. Flannery?

25 A Yes.

1 bjmgr 41

Friedman-Redirect

2 Q What did Mr. Flannery say when you talked to him
3 about that?

4 A He told me that he was not in charge of the case,
5 that it is the Assistant United States Attorney in charge
6 of the case who was on vacation and he knew nothing about
7 this, and he was taking the procedure.

8 Q Did you mention anything about Mr. Flynn to
9 Mr. Flannery?

10 A In general terms. I don't think I used
11 Mr. Flynn's name.

12 Q What did you say?

13 A I said that I didn't think anything was going to
14 happen and why is this happening and I thought nothing was
15 going to happen if I cooperated.

16 Q He did not press you on that?

17 A No.

18 Q You did not press it beyond saying what you have
19 already told us. Is that it?

20 A Yes.

21 Q Why didn't you come along and scream like a
22 stuck pig and say, "I had a promise with Mr. Flynn saying
23 that I would not be prosecuted for anything related to
24 this case"?

25 A In my mind this whole thing was related and I

1 bjmgr 42

FRIEDMAN-REDIRECT

2 was basing everything that I thought on what Mr. Flynn had
3 told me and when I was called by Agent Smith to come down
4 I asked him why.

5 THE COURT: To come down where?

6 THE WITNESS: To come down on January 8, the day
7 I was indicted. He called me in the morning about 8 o'clock
8 and told me to come down. I asked him why and he said, "We
9 have to clean up the Southern end of this."

10 THE COURT: You are not answering Mr. Block's.
11 Here you were and you claim that Mr. Flynn had promised you
12 40 different ways that you would not be bothered if you
13 cooperated and then you were indicted. Why didn't you turn
14 to this fellow and say, "What the hell is going on here? I
15 had a deal. It was not supposed to be prosecuted"?

16 THE WITNESS: I did, your Honor, and he told me
17 that he was not in charge of this case. He said that
18 Mr. Batchelder was on vacation.

19 THE COURT: Are you saying that you did not press
20 that because you were told that the man in charge was on
21 vacation?

22 THE WITNESS: He said he was there just taking
23 information. That's what he said he was there for.

24 Q When you told Mr. Flannery that you had not been
25 arrested were you trying to conceal any of your arrests

1 bjngr 43

Friedman-Redirect

2 from him?

3 A No. I honestly wasn't.

4 THE COURT: Maybe you weren't, but it is a
5 peculiar way to deal with the situation.

6 I think anybody who has gone through high school
7 knows if they have been arrested or not.

8 THE WITNESS: "You mean relating to this case,"
9 I asked him. He said, "Yes." I answered him and I just
10 misunderstood him.

11 Q By the way, as of the time that you were asked
12 by Mr. Flannery you had been in your first year of law
13 school for just one semester out of two--in other words,
14 you had been at law school from September of 1975, when you
15 started the year, through the first term, is that correct?

16 A Right, I was studying for finals.

17 Q Had you had any criminal law courses during that
18 period?

19 A Not one.

20 THE COURT: You don't have to persuade me of
21 the limitation of the knowledge in this field.

22 MR. BLOCK: All right, I have nothing further.

23 THE COURT: We will take a short break.

24 (Recess.)

25 MR. BLOCK: Your Honor, I thought of two more

Friedman-Redirect

bjmgr 44

1 questions.

2 THE COURT: Go ahead.

3 MR. BLOCK: Mr. Friedman, when did you first
4 consult a lawyer, to wit, me, about your involvement in the
5 case in this court?
6

7 A After I was called by Agent Smith and he
8 told me to be in court. I think this was in May and
9 that, "You're trial is next week. Do you have an attorney?"

10 Q And it was then you were given my name and called
11 me and came in and told me what you testified to and what
12 your wife testified to, is that correct?

13 A Yes, sir. Yes, sir.

14 Q That was in May of 1976?

15 A Yes, sir.

16 Q Did you have any dealings with any agents or do
17 anything in connection with the case at all between January
18 of 1976 and May of 1976 when you contacted me?

19 A No, sir.

20 Q All your cooperation in making cases had been
21 done prior to the time you were indicted, is that correct?

22 A Correct.

23 MR. BLOCK: I have nothing further.

24 THE COURT: I do. You were arrested in January
25 of '76. Did you ask for a lawyer?

Friedman-Redirect

1 bjmgr 45.

2 THE WITNESS: Yes, sir. No, I think I was
3 assigned one.

4 THE COURT: What do you mean that you think that
5 you were assigned one? Here you are in law school and you
6 don't know whether or not you were assigned a lawyer.

7 Were you or weren't you assigned a lawyer in
8 January of this year?

9 THE WITNESS: Yes, sir.

10 THE COURT: Who was assigned at that time? Do
11 you know his name?

12 THE WITNESS: Mr. Block.

13 THE COURT: Did you consult with him?

14 THE WITNESS: No, sir.

15 THE COURT: Why not?

16 THE WITNESS: Because--I was under the impression
17 that if I cooperated I would be, you know, contacted by the
18 agents and I was told I did not need an attorney.

19 THE COURT: Who told you that?

20 THE WITNESS: Mr. Giovanniello said, "You don't
21 need an attorney."

22 THE COURT: You mean at the time you were
23 arrested and indicted?

24 THE WITNESS: While I was making cases.

25 THE COURT: You kept getting arrested and

Friedman-Redirect

bjmgr 46

arrested and indicted and indicted and did you think you did not need a lawyer? They appoint one for you and you don't go to see him--I don't understand it.

Did you want to say something?

THE WITNESS: When I was appointed the attorney, I was told.

THE COURT: Who told you?

THE WITNESS: Mr. Giovanniello.

THE COURT: This was when your lawyer was appointed

THE WITNESS: This was before January 8.

THE COURT: I am asking you when you were arrested here Mr. Block was appointed, right, and who told you Mr. Block was appointed?

THE WITNESS: I think the magistrate.

THE COURT: Why didn't you go to see him?

THE WITNESS: Because I was just very confused and I thought in my own mind that everything--if my cooperation would be taken care of and I thought that, you know, the agents would contact me and that I would know what to do.

THE COURT: This keeps happening time after time and you still go on thinking the same thing.

THE WITNESS: Because I was aware of what was told to me and that was promised and I believed it.

1 bjmgr 47

2 THE COURT: Why didn't you question why you were
3 indicted time after time?

4 THE WITNESS: I did.

5 THE COURT: Why didn't you go to a lawyer and say,
6 "What the hell is going on here?"

7 THE WITNESS: When I went to see Mr. Block I
8 realized the mistake I made.

9 THE COURT: The fact that you were told that you
10 were going to go to trial made you go to see him?

11 THE WITNESS: Yes, sir. And he said, "Sit down
12 and explain this." I explained it to him and told him what
13 happened.

14 He told me that I was foolish for not seeing an
15 attorney before.

16 THE COURT: How right he was.

17 MR. BUCKWALD: I have some questions.

18 RECROSS-EXAMINATION

19 BY MR. BUCHWALD

20 Q You also had an appointed attorney in the
21 Brooklyn case. /

22 A True.

23 Q And you also had a private retained attorney in
24 Nutley, New Jersey, marijuana that preceded your September
25 arrest.

1 Djmgr 48

2 A Yes.

3 Q Was that private retained attorney in Nutley,
4 New Jersey, marijuana case, was he referred to you by the
5 arresting police officer of the Nutley, New Jersey police
6 force?

7 A No, sir.

8 Q You got him on your own?

9 A Yes, sir.

10 MR. BUCHWALD: I have no further question.

11 MR. BLOCK: I have nothing further. If your
12 Honor please, I would be prepared to get on the witness
13 stand or make a representation to the court that after I
14 was assigned--because I was not asleep at the switch.

15 THE COURT: We do not need to go into that at
16 the moment.

17 MR. BLOCK: But the reason I did not attempt to
18 contact him was based on the statement made to me by
19 Mr. Batchelder who I got in touch with and Batchelder told
20 me at the time that I was assigned on January 8, 1976, by
21 Magistrate Goettel and Batchelder said, "Don't worry
22 about this case. The man is cooperating." And so that
23 I heard nothing until I received a frenzied call from
24 Batchelder saying the case is on for trial and "We are going
25 to have Mr. Friedman get in touch with you," which he

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Gray-Direct

1 did. That's the time sequence.

2 THE COURT: Are you finished, Mr. Block?

3 MR. BLOCK: That's the case.

4 MR. BUCHWALD: Your Honor, the government calls
5 Agent Michael Gray.

6 M I C H A E L G R A Y, called as a witness by the
7 government, being first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BUCHWALD:

10 Q Mr. Gray, are you a special agent with the Drug
11 Enforcement Administration?

12 A Yes.

13 Q How long have you been with the government?

14 A Approximately five and a half years.

15 Q Were you on duty on the evening of September 24,
16 1975?

17 A Yes.

18 Q Were you present at the scene of the arrest of
19 Mr. Lawrence Friedman in Clifton, New Jersey, on the evening
20 of September 24?

21 A Yes.

22 Q Will you explain briefly to his Honor where you
23 were in relation to the place of arrest?

24 A We had received information that Mr. Friedman was
25

Gray-Direct

1 bjmr 50

2 going to deliver a large quantity of Quaaludes. Were
3 you a surveyance officer at that time?

4 A Yes.

5 Q Where were you in relation to the actual place
6 where Mr. Friedman was?

7 A I was out on foot about a half a block away.

8 Q Did you proceed to the place where Mr. Friedman
9 was arrested after you saw him?

10 A Yes.

11 Q Who actually placed him under arrest?

12 A That I don't know.

13 Q Did there come a time after the arrest when you
14 observed Mr. Friedman being placed in a Drug Enforcement
15 Administration automobile?

16 A I approached--

17 THE COURT: Did you see him being put in the
18 automobile or not?

19 THE WITNESS: No.

20 Q What did you observe after the arrest?

21 A I observed a large number of cars had come
22 together at an intersection. I went running up there and
23 by the time I was running up there, Mr. Friedman was in
24 the back of a car with Group Supervisor Hall.

25 Q Approximately how much time had elapsed from the

Gray-Direct

1 bjmgr 51

2 time when you initially observed him being placed under
3 arrest to the time you observed him in the car with Group
4 Supervisor Hall?

5 A One or two minutes.

6 Q What, if anything, did you do? What were you
7 assigned to do after you observed the defendant in the
8 Drug Enforcement Administration's car with Mr. Hall.

9 A I was told to proceed to the address in--I
10 believe it was Nutley, New Jersey, the River Edge address
11 and arrest Mr. Friedman's wife.

12 Q Do you recall who, if anyone, you went with or
13 who were the arresting officers that went to arrest
14 Mrs. Friedman?

15 A I recall it was myself, Agent Smith, a Nutley
16 police officer and a New York City police officer.

17 The name of the Nutley police officer and the
18 New York City police officer, I don't recall.

19 Q Is the New York City police officer Detective
20 Giovanniello?

21 A Yes, sir.

22 Q Is he one of the gentlemen in the witness room?

23 A Yes.

24 Q Will you describe to the court what happened
25 from the time you--did you knock on the door?

1 bjmgr 52

2 A Yes, we proceded to their apartment, knocked on
3 the door and identified ourselves as agents and she opened
4 the door.

5 We placed her under arrest. Agent Smith advised
6 her of her rights and we transported her to our office.

7 Q Did you make any statement as to the reason for
8 the arrest?

9 A Yes.

10 Q What was that?

11 A Violation of the federal narcotics laws.

12 Q When you say you advised her of her rights--

13 A It was the constitutional rights as we are given
14 on a little yellow card that has the Miranda warnings.

15 Q Do you recall who it was that read from the card?

16 A Yes, I do.

17 Q Who was that?

18 A Agent Smith.

19 Q Could you explain very, very briefly to his Honor
20 how it was that the Drug Enforcement Administration became
21 involved in the arrest?

22 MR. BLOCH: I don't care about that. I think
23 it is irrelevant.

24 THE COURT: If it is very, very brief, I don't
25 care. I don't know what the significance is.

Gray-Direct

1 bjngr 53

2 Go ahead, answer.

3 A It is my understanding that it was an extension
4 of a New York City Police Department's case in New Jersey
5 and they had made purchases of narcotics from Mr. Friedman
6 and Mr. Friedman had indicated the ability to provide a
7 large quantity of narcotics in New Jersey.

8 We became involved earlier that evening.

9 Q Am I correct that September 24 or the night of
10 September 23rd was the first time the Drug Enforcement
11 Administration was familiar at all with the case.

12 A As far as I know, yes, sir. As far as my
13 recollection.

14 Q As of the time of the arrest itself were you aware
15 of any of the specifics of the prior investigation of the
16 New York City Police Department?

17 A Specific, no, sir.

18 Q Am I correct that one of the reasons the DEA was
19 brought in was because of having to go to New Jersey and a
20 need for a larger sum of money for the sale?

21 A Correct. That evening we divided the money,
22 transmitting equipment.

23 THE COURT: Can we get on with the facts
24 of the case?

25 Q What, if anything, did you do after you advised

Gray-Direct

1 bjmgr 54

2 Mrs. Friedman of what she was arrested for and after she
3 was advised of her constitutional rights?

4 THE COURT: We are now at DEA headquarters?

5 Q Did you drive back to DEA headquarters?

6 A Yes.

7 Q Do you recall who arrived first, Mr. or
8 Mrs. Friedman?

9 A No, I don't.

10 Q What happened when you came up with Mrs. Friedman?

11 A She was processed at our office. She was
12 fingerprinted and photographed.

13 THE COURT: Did you question her?

14 THE WITNESS: I questioned her so far as the
15 details concerning personal history.

16 THE COURT: You did not ask her who their source
17 was?

18 THE WITNESS: That was her husband.

19 THE COURT: Who their source was.

20 THE WITNESS: I don't believe I did, sir.

21 THE COURT: Did anybody in your presence?

22 THE WITNESS: Not in my presence, but I remember
23 having been told after she made some phone calls that
24 night.

25 Q Is it your understanding that she was

1 bjmgr 55
2 interrogated by other agents?

3 A Yes, sir.

4 Q Will you describe to the court as best you recall
5 Mrs. Friedman's emotional state? Start back at the time that
6 you were in the apartment, in the car and back to the
7 Drug Enforcement office.

8 A At the time of the arrest I would say quiet,
9 solemn and then solemn bordering on being smart alecky
10 with quick responses to questions.

11 At the Drug Enforcement Administration she was
12 very jovial and, you know, very friendly and open and
13 joking around.

14 THE COURT: Was she ever in tears?

15 THE WITNESS: Not that I recall.

16 THE COURT: You say not that you recall. Does
17 that mean you cannot tell or definitely in your presence
18 she was not in tears or what?

19 THE WITNESS: In my mind, I don't recall her
20 crying at all.

21 THE COURT: Can you say that when she was with
22 you she did not cry?

23 THE WITNESS: I have no recollection of her
24 crying at all, sir.

25 THE COURT: I have heard that answer three times.

1 bjmgr 56

2 I am asking for a more positive one.

3 Can you state absolutely when she was with you
4 she did not cry?

5 THE WITNESS: I would say yes, sir, she did not
6 cry.

7 Q Where was Mr. Friedman while you were at the
8 Drug Enforcement Administration office?

9 A At one point he was in a cell and at one point
10 he was talking to myself and Agent Smith.

11 Q Do you recall at any time during the evening
12 Mr. Friedman yelling in from the detention cell or some
13 room outside to his wife not to say anything, "Don't say
14 anything, don't say anything."

15 A Absolutely not.

16 Q Do you recall any occasion where Agent Hall
17 left the presence of Mrs. Friedman and went in to
18 Mr. Friedman and told him to shut up?

19 A I don't recall anything like that happening.

20 Q Did you at any time make any statements to
21 Mr. Friedman concerning the fact that Riker's Island was
22 not a good place for women to be because there were
23 lesbians or anything or any statement like that?

24 A No.

25 Q Did you ever make such a statement during the

1 bjmgr 57

Gray-Direct

2 course of that evening, the 24th, the 25th we are talking
3 about, to Mrs. Friedman?

4 A No.

5 THE COURT: Did you discuss either with
6 Mr. or Mrs. Friedman the possibility of her being kept
7 overnight in any jail?

8 THE WITNESS: Yes, sir.

9 THE COURT: Will you tell me who it was you
10 told it to and what you said?

11 THE WITNESS: I believe I was present when she
12 asked where the female prisoners were kept.

13 THE COURT: When was that?

14 THE WITNESS: It would be on the way back into
15 New York, back from her arrest.

16 THE COURT: And she asked where the prisoners
17 were kept?

18 THE WITNESS: Correct.

19 THE COURT: Who responded and what was said?

20 THE WITNESS: I believe I gave her the response
21 that she was going back to our office to be processed and
22 I don't recall but in my presence I believe another person
23 mentioned that the female prisoners were kept in Riker's
24 Island, but I'm not sure.

25 THE COURT: You are not sure it was said or you

Gray-Direct

1 bjmgr 58

2 are not sure who said it?

3 THE WITNESS: Who said it.

4 THE COURT: Was there any discussion about Riker's
5 Island beyond that?

6 THE WITNESS: No, sir. Not that I recall. Not
7 in my presence.

8 Q Do you recall any periods after the Drug
9 Enforcement Administration office where Mrs. Friedman acted
10 hysterical, not necessarily crying but in some hysterical
11 manner or fashion?

12 A Not that I'm aware of.

13 THE COURT: Why can't anybody say no? Do you
14 recall is what you are being asked.

15 THE WITNESS: No, I don't recall her ever having
16 performed in any way.

17 Q Am I correct that there were times when you were
18 physically present in the DEA office and up to the 19th
19 floor and back down to speak to the New York City police
20 officers?

21 A Yes.

22 MR. BUCHWALD: I think the witness said that he
23 was not there all the time.

24 Q When, if at all, did you first become aware that
25 Mr. or Mrs. Friedman or both were going to cooperate or

Gray-Direct

1 bjmgr 59

2 indicated that they might cooperate with the authorities?

3 A I recall Mrs. Friedman becoming--willing to
4 cooperate after having been told that she could make some
5 phone calls to another person we eventually arrested that
6 evening, a defendant by the name of Jeffrey Nach.

7 THE COURT: About what time was that or how many
8 hours after her arrest action approximately?

9 THE WITNESS: I don't remember. It would be a
10 wild guess to tell, say, an hour.

11 THE COURT: If it is a wild guess, forget it.

12 Q Did there come a time during the evening when
13 Mrs. Friedman agreed to, in fact, make telephone calls
14 to Mr. Nach which would be recorded?

15 A Yes.

16 Q Were you present during those calls?

17 A No.

18 Q Did you go with Mrs. Friedman to the rendezvous
19 with Mr. Nach?

20 A Yes, I believe she was driven over in a DEA car
21 and we followed her to the Nach address and Nach left his
22 house, entered her car and drove a couple of miles and we
23 arrested Nach.

24 Q Did she appear composed and self-possessed at
25 that time?

1 bjmgr 60

2 A Yes.

3 Q Were you present the next morning when Mr. Friedman
4 and/or Mrs. Friedman were at the United States Attorney's
5 office in Newark?

6 A Yes.

7 Q Were you one of the agents who picked Mr. Friedman
8 up?

9 A Yes, myself, Agent Smith and I believe a police
10 officer transported Mr. Friedman from our office over into
11 Newark.

12 Q Were you present at any time in Mr. Flynn's office-
13 was that the name of the Assistant United States Attorney?

14 A Yes.

15 Q Were you present at any time in his office while
16 either Mr. or Mrs. Friedman were present?

17 A Yes, at the end of the day--and at the end of
18 the day it would be approximately noon when they signed a
19 waiver of arraignment.

20 Q Were you present during the individual interviews
21 which Mr. Flynn conducted of either Mr. or Mrs. Friedman?

22 A The individual, no, sir.

23 Q Where were you at the time?

24 A I was out in the hallway waiting with the
25 respective persons to be interviewed.

Gray-Direct

1 bjmgr 61

2 Q During that period of time when you were present
3 in Mr. Flynn's office with Mr. and Mrs. Friedman, about how
4 long were you in the office yourself?

5 A Twenty minutes.

6 Q During that period of time do you recall any
7 conversation concerning Mr. Friedman's status?

8 A Yes. I recall that he stated that he was a law
9 student. The subject of the conversation went from being
10 a law student, school teacher and how the arrest would
11 affect his career in law school.

12 Q Did you or any of the other agents in your presence
13 or Mr. Flynn in your presence make any statements to
14 Mr. Friedman to the effect that Mr. Friedman would not be
15 prosecuted if he cooperated with the authorities?

16 A Absolutely not. That was one of the main things
17 that was continually brought to Mr. Friedman's attention--
18 he wanted an assurance that he would not be prosecuted and
19 I distinctly remember Mr. Flynn and myself and Agent Smith,
20 we had no--no say so in such a situation and Mr. Flynn
21 several times stated that he had no assurance on the part
22 that he was cooperating for the sake of cooperation and it
23 would be brought to the attention of the judge.

24 MR. BUCHWALD: I have no further question,
25 your Honor.

Gray-Cross

1 bjmgr 62

2 CROSS EXAMINATION

3 BY MR. BLOCK

4 Q How long did you say you have been a narcotics
5 agent?

6 A Five and a half year, sir.

7 Q Is Mr. Hall your superior?

8 A Yes.

9 Q Is Mr. Smith your superior?

10 A No.

11 Q But Hall is a supervisor, isn't that correct?

12 A Yes.

13 Q Have you been informed what the claims are of
14 Mr. and Mrs. Friedman in connection with this case? Have
15 you been told what they are claiming?

16 A From the Assistant Attorney?

17 Q You have been told about that?

18 A The exact nature, no, sir. I am only going by
19 what I understand.

20 THE COURT: What do you understand?

21 THE WITNESS: That they have or at the time of
22 arrest they were given an assurance that they would not be
23 prosecuted.

24 THE COURT: You mean that is what they are
25 claiming?

1 bjmgr 63

2 THE WITNESS: That's my understanding.

3 Q Have you discussed their claim with the other
4 agents while you were waiting around in the witness room?

5 A No.

6 Q So what you are telling us is based on your own
7 recollection, is that correct?

8 A Correct.

9 Q Do you have any notes at all of what happened,
10 the events of September 24 and 25 of 1976, do you have any
11 notes?

12 A No.

13 Q You don't keep notes?

14 A I didn't write any reports in the case that I
15 recall.

16 Q That is all I am asking you. So you are
17 testifying from your recollection, is that correct?

18 A Correct.

19 Q Did you read Mr. Friedman his rights at DEA
20 headquarters?

21 A I don't know one way or the other, sir. I
22 don't recall.

23 Q If I were to tell you that Mr. Friedman has
24 testified that an agent whom he knew as Scotty and you
25

1 bjmgr 64

2 are generally called Scotty, is that correct?

3 A Yes.

4 Q Read him his rights, pulled out a card and read
5 it, would you deny that that happened or you just can't
6 remember?

7 A I would say if I did, I did.

8 Q But you don't have any recollection of it?

9 A No.

10 Q Isn't it correct that when the agents, you know,
11 the DEA agents come in on a case like this and make a
12 seizure of a substantial number of pills from a suspect like
13 Friedman that they are interested in finding out who his
14 source is, isn't that correct?

15 A Correct.

16 Q Was there anything said at the time of the arrest,
17 that you remember hearing, to Mr. Friedman as to who his
18 source was, whom he had gotten the pills from that he was
19 trying to sell to Pollini?

20 A Sir, at the time of the arrest I was on foot a
21 half a block away.

22 Q When you came up to the scene and close enough
23 to hear was there?

24 A The only thing I was told--I was told to arrest
25 the wife of some police officers.

1 bjmgr 65

2 Q You did not hear anything at all about any
3 questioning of Mr. Friedman about his source at the scene
4 in Clifton, New Jersey?

5 A Correct.

6 Q That is your statement?

7 A That's my statement. My statement is that I
8 don't recall. I wasn't even there long enough to listen in
9 on a conversation.

10 Q Were you present when Jeffrey Nach was brought
11 in?

12 A Yes.

13 Q Were you present when Jeffrey Nach was questioned
14 as to who his source had been for the pills he turned over
15 to Friedman?

16 A Yes.

17 Q Did Jeffrey Nach readily give his source at the
18 time he was asked?

19 THE COURT: What difference does it make?

20 MR. BUCHWALD: I will shortcut it.

21 Q Did there come a time during the questioning of
22 Mr. Nach that Mr. Friedman was called in and helped with
23 the questioning of Mr. Nach so that Mr. Nach ultimately
24 revealed his source?

25 A Yes.

1 bjmgr 66

2 Q Was that due to the persuasion of Mr. Friedman?

3 A No. I think it was due to the realization that
4 Nach realized that we had arrested Friedman.

5 Q Was Friedman present during some of the
6 questioning of Nach?

7 A Yes.

8 Q Did Friedman urge Nach in your presence to
9 cooperate and give his source?

10 A My recollection is that Friedman's statement at
11 the time was along the lines of him being in law school and
12 he had everything to lose. As far as the effect on Nach,
13 I can't--it would be Nach to say one way or the other.

14 THE COURT: I understand that only Nach can tell
15 us what caused him to make his disclosure but objectively
16 and not taking your opinion, did Friedman urge Nach to give
17 the name?

18 THE WITNESS: Well, he was present in the room
19 when I was talking to Nach. I think he related the facts
20 to Nach that myself and his wife--I believe his wife's
21 nickname is Meg--had been arrested and--

22 THE COURT: The question, Agent, is simple.
23 Did Friedman urge Nach to cooperate and give his source?
24 Yes or no?

25 WITNESS: I would say yes.

Gray-Cross

bjmnr 67

Q You said in describing the emotional responses of Mrs. Friedman, while she, and correct me if I am wrong but this is my recollection of your testimony, that after she had been arrested and you were in the car taking her to DEA headquarters that she made quick responses to questions and she was jovial, is that the way you described her?

THE COURT: When he was talking about that he said that she was smart-alicky.

Q Was that in the car?

A The jovial responses were more along the lines at our office and the smart-alicky, quick responses were from the time of the arrest and the transportation to the office.

Q So she was smart-alicky and what was she smart-alicky in response to?

What were the questions that were asked of her?

A She asked where she was going and we told her the Ford Building, 57th and eleventh.

Q You said, just a second ago, that she was making quick responses to questions.

I am asking you what the questions were that were asked of her by the agents and not the questions she asked.

What questions were asked of her by the agents on this expedition, in her apartment, in the car going to

1 bjmgr 68

2 DEA headquarters?

3 A I recall if she had ever been arrested before.

4 THE COURT: What did she answer?

5 THE WITNESS: I believe she stated she had
6 been for marijuana.

7 Q Go ahead.

8 A That's the only question. I know there was other
9 dialogue back and forth.

10 Q You were there and you were in the car, right?

11 A Right.

12 Q And she was warned of her rights in the apartment
13 by Mr. Smith immediately after she was arrested?

14 A Right.

15 Q Wasn't she asked "Don't you want to cooperate and
16 tell us who your source is?" Wasn't she asked anything like
17 that?

18 A We knew who her source was.

19 Q I am talking about the source for Friedman, forget
20 about her husband. Put it this way. Wasn't she asked from
21 whom her husband had gotten the pills?

22 A No, sir.

23 Q You don't recall that?

24 A No, sir.

25 Q Was she ever asked that when you got to DEA

1 bjmgr 69

2 headquarters? Did anybody ask her that?

3 A I would say somebody but I don't recall who.
4 I don't think I did.

5 Q Were you present when Mr. Friedman was being
6 asked about his source for the pills?

7 A I don't believe I was.

8 Q When you got to DEA headquarters with Mrs. Friedman
9 about what time was that? Do you have any recollection?

10 A The evening, sir, and I haven't looked at a
11 report in a year. Literally a year. I haven't looked at
12 the agency reports.

13 Q You don't remember?

14 A No, sir.

15 Q Isn't it correct that the arrest was made on the
16 evening of September 24 sometime around 3 or 9 o'clock at
17 night? Do you remember that?

18 A The time sounds correct but if it is exactly
19 correct--

20 Q You don't recall?

21 A It would be in the evening, sir.

22 THE COURT: He remembers that it was at night.

23 Q In any event, regardless of the time, you got
24 to DEA headquarters with Mrs. Friedman, is that correct?

25 A Yes, sir.

1 bjmgr 70

2 Q And she is processed, right?

3 A Correct.

4 Q Who did the processing?

5 A I believe myself along with Agent Smith.

6 Q What does processing consist of?

7 A Fingerprinting, photographing and a personal
8 history.

9 Q And you take the personal history?

10 A Correct. Wait a minute. We also have to
11 inventory the personal property, and if the person wants
12 to talk with us at that time we would talk with them also.

13 Q So she is processed and is she processed as
14 soon as she gets there?

15 A I don't recall the time frame, you know, if we
16 walked in the door and immediately began processing her
17 one way or the other.

18 Q Did this business with Mrs. Friedman take place
19 in one room at DEA headquarters except that she was taken
20 to some other place to have her photograph taken?

21 A As I recall it, she was fingerprinted and
22 photographed in the same room because the apparatus is
23 there and whether or not she was in the same room as where
24 we took the personal history--where she lives and works
25 and things that--I don't recall if that's in the

1 bjmgr 71

2 same room or separate rooms.

3 The phone calls that she made ultimately that
4 night I believe were made in an area completely away from
5 either one of these two rooms.

6 Q Is there a main room at DEA headquarters where
7 she would be sat down and a personal history taken?

8 A No, sir. There's an interview room that's
9 adjacent to the fingerprinting and photographing room.

10 Q What floor is this room on?

11 A The 18th floor.

12 Q How long did you spend in that room, as long as
13 the Friedmans were there?

14 A I was in and out of the rooms. Per se for
15 however long it took us before we went back into New Jersey
16 with her.

17 Q You don't recall how long that was?

18 A A couple of hours.

19 Q When you say you were in and out, what were you
20 going out for?

21 A Well, I believe I purchased a soda, an orange
22 pop, I believe, but I am not sure.

23 Q You didn't have any other official duties to
24 perform, did you?

25 A Well, that's what I was going to tell you.

1 bjmgr 72

2 We had to process the evidence. I don't remember if I
3 helped watch the stuff get processed.

4 THE COURT: The pills?

5 THE WITNESS: That had to be taken care of too.

6 Q Did you observe Agent Hall in the process of
7 questioning Mrs. Friedman at all?

8 A I recall Mrs. Friedman sitting in our snack bar
9 area having a soda and talking--

10 Q Agent, I am asking you a simple question.

11 A Let me finish.

12 Q I am asking you if you saw Agent Hall questioning
13 Mrs. Friedman at any time after she got to DEA headquarters,
14 yes or no?

15 A I can't give you a fair answer on that.

16 Q You don't recall? Did you give--

17 THE COURT: I don't understand why you can't say
18 that.

19 THE WITNESS: I don't remember the exact time
20 frame as far as questioning or pleasantries being discussed
21 in the snack bar area.

22 THE COURT: Then apparently you don't know.

23 Q Did you see any agent engaged in questioning
24 Mrs. Friedman after she had had her personal history taken?

25 A As far as questioning, sir, and as to the subject

1 bjrgr 73

2 of the conversation, I don't know.

3 THE COURT: We are talking about the subject
4 matter of this litigation.

5 THE WITNESS: All right, the subject matter, sir,
6 of the conversation, I don't know what was being discussed.

7 Q Did you observe any agents questionin Mr. Friedman?

8 A I was one of the agents so if you consider
9 myself questioning, yes, I asked Mr. Friedman questions.

10 Q When did you question Mr. Friedman?

11 A That night.

12 Q At DEA headquarters?

13 A Yes.

14 Q Were any other agents questioning Mr. Friedman at
15 the time you were?

16 A Now remember when I am talking of questioning
17 Mr. Friedman it is not in terms of the case in which he is a
18 defendant. It would be questioning him in terms of the
19 personal history.

20 Q That's not what I am talking about.

21 THE COURT: Did you ask him any other questions
22 besides the personal history?

23 THE WITNESS: I remember late that night after
24 [redacted] and stated who his source of supply was, a guy by the
25 name of [redacted] and questioning Friedman if he knew

1 bjgr 74

2 him and Friedman said he knew him.

3 Q That is the only questioning of Friedman that you
4 recall?

5 A Mr. Friedman, and I don't know if I discussed his
6 previous arrest or not. I can't recall.

7 Q Did you say that you were present in Mr. Flynn's
8 office all the time that Mr. Friedman was there?

9 A Mr. and Mrs. Friedman.

10 THE COURT: Together?

11 THE WITNESS: Yes.

12 Q You came in and did you accompany Mrs. Friedman
13 into the room?

14 A I forget who was first but the second, like,
15 Mr. Friedman would have been in there and he said, "I want
16 to see the other one," and sir we had the married couple
17 come there. I had been out in the hallway with whoever
18 wasn't there and walked in there with them at which time
19 Mr. Flynn spoke and as far as about responding to the
20 questions and the demands for assurances on the part of the
21 Friedmans, I don't know.

22 Q You don't remember who you escorted in, Mr. or
23 Mrs. Friedman?

24 A Correct.

25 Q Do you recall having been in Flynn's office

1 75

2 during the time that Mrs. Friedman was there during a short
3 period of time. Is that correct?

4 A Mr. and Mrs. Friedman together were there.

5 Q How long was that?

6 A Twenty minutes.

7 Q While you were sitting on the bench?

8 THE COURT: Outside?

9 Q Outside of Mr. Flynn's office. You were sitting
10 there for quite a while, weren't you?

11 A Yes.

12 Q With the defendants Nach and Friedman and
13 Mrs. Friedman before they were called into Mr. Flynn's office?

14 A Correct. Mrs. Friedman got there late. Now, one
15 of the other two defendants would have been in the office
16 already.

17 THE COURT: From time to time one or the other
18 was there?

19 THE WITNESS: Correct.

20 Q Was there any conversation among the agents,
21 including yourself and Mr. Friedman about any people that
22 Mr. Friedman knew who were involved with drugs and whom
23 you might be able to make cases for you fellows? Was there
24 any conversation along those lines?

25 A With me that I recall.

1 bjmgr 76

2 Q Did you hear some talk about it?

3 A I remember hearing and I don't know if it was
4 that day, the day after the arrest or a later date, that he
5 knew people, and I believe it was in Brooklyn or one of the
6 Manhattan boroughs, but people that he had grown up with that
7 were trafficking in narcotics.

8 Q It would have happened when you were sitting on
9 the bench?

10 A My recollection is that after his arrest and maybe
11 at time of--while we were sitting out there, but it would be
12 more along the lines of at a later date.

13 Q Do you recall that at the time that Mr. Friedman
14 was arrested that there was some argument about jurisdiction
15 in connection with the arrest between the Nutley police and
16 the agents and the New York City police?

17 A Whose arrest is this, the wife's arrest?

18 Q No. I am talking about when Mr. Friedman was
19 arrested. Do you remember any such things?

20 A No, I didn't.

21 MR. BLOCK: No other questions.

22 RE-EXAMINATION BY

23 MR. BUCHWALD

24 Did you hear such a thing in connection with
25 Mrs. Friedman's arrest?

1 bjmgr 77

2 A Yes.

3 Q The end of last week have you been testifying in
4 the trial in the Eastern District?

5 A Yes.

6 Q Were you present in the Eastern District this
7 morning?

8 A Correct.

9 Q Were you called over here a half hour before you
10 testified?

11 A Yes.

12 Q So you can testify.

13 A Correct.

14 Q Have you read your reports in this particular case?

15 A Sir, the only thing I have seen out of this case
16 within the last six months is that smiling arrest photograph.

17 Q When you arrested Mrs. Friedman did you ask
18 Mrs. Friedman

19 A I don't believe I did. I would not have a reason
20 to.

21 MR. BUCHWALD: I have no further questions.

22 THE COURT: Thank you very much.

23 MR. BUCHWALD: The government calls Mr. Jeffrey Hall

24 J E F F R E Y H A L L, called as a witness by the govern-
25 ment, being first duly sworn, testified as follows:

1 bjmgr 78

2 DIRECT EXAMINATION

3 BY MR. BUCHWALD

4 Q Mr. Hall, are you a special agent employed by
5 the Drug Enforcement Administration?

6 A Yes.

7 Q How long have you been so employed?

8 A Approximately nine years.

9 Q Are you a group supervisor of a group which
10 includes Michael Gray and Alexander Smith?

11 A Yes.

12 Q Let me direct your attention to September 24,
13 1975.

14 Were you a surveillance officer on that evening
15 in connection with the arrest of one Larry Friedman?

16 A Yes, I was.

17 Q Where did that take place?

18 A New Jersey.

19 Q Was it Clifton?

20 A Yes.

21 Q Did you actually see Mr. Friedman placed under
22 arrest?

23 A Yes.

24 Q How soon thereafter did you have occasion to
25 speak to Friedman?

1 bjmgr 79

2 A A matter of minutes.

3 Q Where did your conversation with Mr. Friedman
4 take place?

5 A In a car.

6 Q Do you recall who the arresting officers were?

7 A I believe there was Smith and a police officer
8 Pollini.

9 Q Of the New York City Police Department?

10 A Yes.

11 Q He was the undercover agent in connection with
12 the case?

13 A Yes, he was.

14 Q And the car that you refer to, is that the
15 government vehicle that you were using for surveillance?

16 A Yes, sir.

17 Q What, if anything, occurred when Mr. Friedman was
18 brought to your automobile?

19 A I advised him of his constitutional rights.

20 Q Will you explain to the court what those rights
21 were?

22 THE COURT: That is not necessary.

23 Q What, if anything, did you do after you advised
24 him of his rights?

25 A Attempted to have a conversation with him

1 bjmgr 80

2 concerning his source of supply.

3 THE COURT: You mean you asked him who his source
4 was?

5 THE WITNESS: Yes, you Honor, and he would not
6 tell me.

7 Q Then what happened?

8 A Then shortly after that he was transported to our
9 office in Manhattan?

10 Q Do you recall approximately how long you were in
11 the car in Clifton before you started off to New York?

12 A I don't remember exactly how long. How long I
13 was in the car?

14 Q In the car. Once Mr. Friedman had been brought
15 over to the car, how long were in there?

16 A I was in the car with him briefly when I had the
17 conversation that I just described and then I was out of
18 the car for a while talking with other agents and to some
19 police officer that were there.

20 Q Did you instruct some other agents to go over
21 and arrest Mr. Friedman?

22 A Yes. It was approximately 20 minutes that we
23 were from the time that Mr. Friedman was arrested until
24 we left for the office.

25 Q I correct that you did not participate in

1 bjmgr 81

2 the arrest of Mrs. Friedman?

3 A No, I did not.

4 Q At any time during the course of the evening did
5 you or did anyone in your presence say to Mr. Friedman in
6 words or substance anything about lesbians at Riker's Island
7 or lesbians at any place where Mrs. Friedman might be
8 lodged at overnight?

9 A No.

10 THE COURT: Did you discuss with Mr. Friedman at
11 all the fact that his wife was being arrested or had been
12 arrested?

13 THE WITNESS: Yes, your Honor.

14 THE COURT: What was that? Tell me about that.

15 THE WITNESS: When I was talking to him about
16 cooperation in the car, about his source of supply and so
17 forth, I told him that his wife was going to be arrested
18 and that any cooperation that he might give would be in his
19 best interest and probably in his wife's best interest.

20 THE COURT: Did you discuss with him or did
21 anybody in his presence discuss with him where she would be
22 held?

23 THE WITNESS: Not that I can remember, your Honor.

24 THE COURT: Does that mean that it might have
25 been discussed or you are not sure or you are sure it was

1 bjmgr 82

2 not discussed?

3 THE WITNESS: Somebody may have said where she
4 was going to be held overnight, but I don't remember saying
5 that.

6 THE COURT: In other words, you are not sure
7 whether it was said or not?

8 THE WITNESS: Yes, your Honor.

9 Q Did there come a time that you arrived at the
10 54th Street office with Mr. Friedman?

11 A Yes.

12 Q Do you recall who else was with you in the car
13 on the way back from Clifton to Manhattan?

14 A Several police officers. I believe two or three
15 police officers were in the car.

16 Q And yourself?

17 A Yes.

18 Q Do you recall whether or not Mrs. Friedman was
19 present at the Drug Enforcement Administration headquarters
20 when you arrived there?

21 A She was not there.

22 Q Am I correct that when you brought Mr. Friedman
23 upstairs Mrs. Friedman was not yet at the Drug Enforcement
24 Administration headquarters?

25 A Correct.

1 Dmgr 83

2 Q What, if anything, did you do after you arrived
3 with Mr. Friedman?

4 A I don't recall exactly what I did. I know he
5 was processed. Mr. Friedman was processed.

6 Q By that you mean photographed and fingerprinted?

7 A Yes.

8 Q Do you recall approximately how soon after you
9 arrived at DEA headquarters, how soon the processing took
10 place?

11 A Almost immediately.

12 Q Are you referring to the photographing,
13 fingerprinting and personal history report?

14 A Yes.

15 Q Did you personally conduct the personal history
16 interview or was that another agent?

17 A Another agent.

18 Q Do you recall who it was?

19 A No, I don't know.

20 Q What happened after that? What, if anything,
21 was done with Mr. Friedman?

22 A I believe he was placed in one of the detention
23 cells.

24 Q Do you recall where this detention cell was in
25 relation to the processing area where the fingerprinting

1 Bjmgr 84

2 and photographing is done?

3 A In a separate room.

4 Q Can you see in if the detention cell door is
5 open? Can you see into the processing room?

6 A From one of the cells you can see in, yes.

7 Q Do you have a recollection of which cell
8 Mr. Friedman was in on that evening?

9 A No, I don't know.

10 Q Did there come a time when you saw Mrs. Friedman
11 at the DEA headquarters?

12 A Yes.

13 Q Do you recall approximately when that was?

14 A I don't recall the time.

15 Q In relation to other events?

16 A I recall it being about 15, 20 minutes to a half
17 hour after I arrived with Mr. Friedman.

18 Q Did you have any discussions with Mrs. Friedman?

19 A Yes.

20 Q Will you explain to the court as best you can
21 recall what you said and what you asked and what she said
22 or did?

23 A I told her that her husband had refused to
24 cooperate and identify his source of supply. I talked to
25 her about cooperation.

1 bjmgr 85

2 I asked her if she would tell us who the source
3 of supply was. She agreed to cooperate and she told me that
4 she wanted to speak to her husband, Mr. Friedman, and she
5 was allowed to speak with him. Then they asked to speak to
6 me alone. Then I went into one of the interview rooms with
7 Mr. and Mrs. Friedman. I had a conversation with them
8 concerning cooperation.

9 During the course of this conversation they asked
10 me about guarantees of not being prosecuted, guarantees of
11 his law school not being notified.

12 Q What, if anything, did you say when they asked
13 you about those things?

14 A I told them I could not make them any guarantees
15 except that whatever--this cooperation would be brought to
16 the attention of the United States Attorney's office.

17 Q Do you recall that any time during your
18 questioning or conversing with Mrs. Friedman while
19 Mr. Friedman was in the detention cell or in the adjoining,
20 Mr. Friedman shouting in, "Be quiet, be quiet. Don't say
21 anything," or words to that effect?

22 A I don't recall him saying that, no.

23 Q What was Mrs. Friedman's emotional and physical
24 state as you observed her for the first time at DEA
25 headquarters.

1 bjmgr 86

2 A For the first time she was serious.

3 THE COURT: Serious you say?

4 THE WITNESS: Yes. She didn't appear to be
5 overly upset. She was fairly calm.

6 Q What, if anything, did you observe after that?

7 A She eventually calmed down completely after she
8 had agreed to cooperate and after we had had some discussion
9 about what her cooperation would entail she was completely
10 calm.

11 Q Was there any period of time at DEA headquarters
12 where you observed her acting in some hysterical manner?

13 A No.

14 THE COURT: You said that later she calmed down
15 completely which implies that she was partially not calm
16 for a while.

17 THE WITNESS: When she first arrived I recall
18 her being, perhaps, a little upset or a little worried,
19 apprehensive as to what was going to happen.

20 After she agreed to cooperate, then she became
21 completely calm and not at all upset. But at no time was
22 she hysterical by any means.

23 Q Did you ever observe her smiling?

24 A Yes.

25 Q When was that?

1 bjmgr 87

2 A On several occasions.

3 Q Did you observe her smiling at all before the
4 time when she and her husband conferred together?

5 A I believe so, yes.

6 Q Did you ever tell Mr. Friedman that if he did not
7 cooperate you were going to notify or make certain that his
8 law school was notified of the arrest?

9 A No, I did not. I told him I had no control over
10 whether his law school would be notified or not.

11 Q Were you present the following day at arraignment
12 or the would-be arraignment of Mr. Friedman in the Newark
13 Attorney's office?

14 A No.

15 Q Did you have anything to do with picking up
16 Mr. Friedman from MCC on that morning?

17 A No.

18 Q You were not present in Newark at all the next
19 day?

20 A No.

21 Q At any time during the evening of September 24 and
22 25 following Mr. Friedman's arrest, did you or any other
23 agent in your presence say to Mr. Friedman or to Mrs. Friedman
24 in words or substance that Mr. Friedman would not be
25 prosecuted if he cooperated with the authorities?

Hall-Direct-Cross

1 Direct 28

2 A No.

3 MR. DUCHWALD: I have no further questions.

4 CROSS-EXAMINATION

5 BY MR. BLOCK

6 Q Mr. Hall, there were a number of agents present,
7 agents, police officers and so forth, who were present at
8 the time Mr. Friedman was arrested, isn't that right?

9 A Yes.

10 Q Do you recall that Lt. Lowey of the New York
11 Police Department was there?

12 A Yes.

13 Q Sgt. Paulson was there?

14 A Yes.

15 Q Detective Giovanniello?

16 A Yes.

17 Q And Police Office Pollini?

18 A Yes, sir.

19 Q By the way, did you observe Police Officer
20 Pollini make the actual arrest of Friedman?

21 A Yes, I did.

22 Q Pollini had been the undercover agent who was
23 purporting to buy the pills in question from Friedman that
24 night, isn't that correct?

25 A rect.

1 Dinger 89

2 Q Did you observe Pollini put a pistol to
3 Friedman's head at the time he placed him under arrest?

4 A He may have had his pistol drawn. I don't know
5 exactly if he did or not.

6 Q You were there, weren't you?

7 A Yes.

8 Q You were surveying.

9 A Yes.

10 Q This was a year or so ago, a year ago, and I
11 think as of one day last week it marked the anniversary of
12 this arrest. Isn't that correct, September 24, 1975, and
13 just about a year ago?

14 A Yes.

15 Q You have had a number of other incidents involving
16 violators in the intervening period of time, isn't that
17 correct?

18 A Yes.

19 Q Did you make any notes of this particular
20 occurrence of the 24th of September?

21 A No.

22 Q You did not?

23 A No.

24 Q What you are telling us is all in your recollection,
25 is that correct?

1 bjmgr 90

2 A Correct.

3 Q Was there also a Police Officer O'Connor who
4 was there?

5 A I don't remember.

6 Q Was there a Police Officer Rick Odelli?

7 A Yes.

8 Q Is he known as Rick?

9 A I don't know.

10 Q Were there a couple of New Jersey State troupers
11 there?

12 I will tell you the names and maybe it will ring
13 a bell. Trouper Bershevsky.

14 A I believe there were a couple of state troupers
15 there.

16 THE COURT: Why did you need so many people?

17 THE WITNESS: Your Honor, when we go over to
18 New Jersey we have to include--we have to let everybody know
19 and everybody wants to participate with us.

20 THE COURT: Why?

21 THE WITNESS: I don't know.

22 THE COURT: This is a matter of curiosity on
23 my part. Why are ten or twelve people needed to arrest
24 the man testifying before me today?

25 MR. BUCHWALD: He did not have a sign on his

1 Djmgr 91

2 back saying that he was a non-violent law student drug
3 dealer.

4 Q Anyway, in addition to the two state troupers
5 there was Special Agent Smith?

6 A Yes.

7 THE COURT: Do you have to go through everybody
8 that was there? I find there were a lot of policemen there.

9 Q After the arrest was made was there any argument
10 that took place or let's call it a discussion among the
11 various law enforcement officials about who was going to
12 take over the prisoner or problems of jurisdiction? Was
13 there any discussion that occurred after Mr. Friedman had
14 been arrested?

15 A No.

16 Q What actually happened? Can you tell us? He
17 is taken into custody and Friedman was told that he was under
18 arrest and then what happened?

19 What are all these different law enforcement
20 officials, police, federal agents, New York City cops, what
21 did they do, vanish into the night?

22 A The first thing that happened was that
23 Mr. Friedman was placed in the car.

24 Q The absolutely first thing that happened?

25 A The first thing I remember happening, yes,

Hall-Cross

1 Djnagr 92

2 after his arrest.

3 Q Let me interrupt you. Is it possible that that
4 was not the first thing that happened with Mr. Friedman
5 after he was placed under arrest and that he was placed in
6 handcuffs and searched, didn't that happen?

7 A Yes, probably. I didn't do it myself.

8 Q You were there and you don't recall his being
9 handcuffed?

10 A No.

11 Q Would you say he was not handcuffed?

12 A No, I don't recall.

13 THE COURT: This is an interesting exercise in
14 cross-examination but the case does not turn on that.

15 MR. BUCHWALD: There may be one thing that
16 Mr. Block is trying to get at.

17 THE COURT: Move along.

18 Q In any event, it is your statement, and this you
19 recall very clearly, that when you got into the car with
20 Mr. Friedman you warned him of his rights.

21 A Yes.

22 Q No doubt about that in your mind?

23 A No, no doubt about it.

24 Q After you warned him of his rights, did you say,
25 "Well, do you want to cooperate with us and us and tell us

Hall-Cross

1 bjmgr 93

2 your source?"

3 A Words to that effect, yes.

4 Q Did he say something to the effect, "I want an
5 attorney. I don't want to say anything. I'm all confused,"
6 something along those lines?

7 A Something along those lines, yes.

8 Q By the way, were there other officers in the car
9 with you at this time?

10 A I believe there were.

11 Q Who were they?

12 A I don't remember.

13 Q You don't remember their names?

14 A No.

15 THE COURT: One or more?

16 THE WITNESS: Your Honor, I think there was one
17 other officer in the car.

18 Q You were particularly interested in finding out
19 who the source was, isn't that correct?

20 A Yes.

21 Q Did you keep on asking him who his source was?

22 A No. I did not.

23 Q You mean you dropped the subject completely?

24 A I asked him and he refused to tell me. I didn't
25 ask him any more.

1 bjrgr 94

2 Q At what point did you tell him that his wife was
3 being arrested? Was that before or after you warned him of
4 his rights?

5 A After I warned him of his rights.

6 Q Was anything said like "You might be held overnight
7 and have to go to Riker's Island"? Didn't you testify before
8 that somebody may have said something along those lines?

9 A I didn't say while I was in the car but somebody
10 may have said it at some time.

11 Q I'm talking about in the car.

12 A In the car I don't remember anyone saying it.

13 Q Was there any conversation in the car that you
14 were going to DEA headquarters?

15 A Most of the conversation going to DEA headquarters
16 concerning Mr. Friedman was Mr. Friedman blurting out
17 something and me telling him to shut up.

18 THE COURT: What did he blurt out?

19 THE WITNESS: Your Honor, I don't remember
20 exactly what he was blurting out. He kept on talking out
21 loud and asking questions. I don't recall exactly what
22 he was saying. I told him two or three times to shut up.

23 Q You say you told him that his wife was being
24 arrested after you had warned him of his rights, correct?

25 A Yes.

1 bjrgr 95

2 Q When you told him his wife was being arrested did
3 he ask any questions about what would happen to his wife,
4 would she be put in jail overnight or anything like that,
5 any questions along those lines?

6 A No, he didn't seem particularly concerned about
7 his wife.

8 Q That's your impression.

9 A Yes.

10 Q In other words, no further allusion to his wife
11 in the car?

12 A Not that I remember, no.

13 Q Did he tell you he was going to law school and
14 he was worried about being kicked out of law school in the
15 car?

16 A I don't remember if it was in the car or in the
17 office.

18 Q When you got to the office with him you say he
19 was processed by some other officer, is that correct?

20 A Some other agent, yes.

21 Q Then he was put in a holding cell, is that
22 correct?

23 A Yes.

24 Q Did you go into the holding cell and talk to him
25 from time to time while he was at DEA headquarters?

1 bjmgr 96

2 A No.

3 Q You did not?

4 A No, I didn't .

5 Q Did anybody go in and talk to him while he was
6 in the holding cell?

7 A I don't remember.

8 Q You did not observe anybody else?

9 A No, I did not observe anyone going in to the
10 cell.

11 Q Did you at any time tell him that if he did not
12 reveal his source, disclose who his source was that you
13 would notify his law school of his arrest?

14 A No, I did not.

15 Q Did you ever see Mrs. Friedman in tears?

16 A No.

17 Q Did you see her crying at all while she was up
18 at DEA headquarters and you were around?

19 A No, I did not.

20 Q Did you ever hear Mr. Friedman say that he
21 wanted an attorney?

22 A He may have said it in the car after I advised
23 him of his rights.

24 Q Did you question him at all about his source
25 after you advised him of his rights?

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1 bjmgr 97

2 Q After he said that he wanted an attorney did
3 you ask him about his source?

4 A After I advised him of his right, yes, I asked
5 him about his source.

6 Q At that time you said he did not want to tell
7 you what the source was and that he wanted an attorney,
8 is that right?

9 A At one point he told me he did not want to tell
10 me and he wanted an attorney, yes.

11 Q Was that in the car?

12 A In the car.

13 Q Was that while the car was moving on the way to
14 DDA headquarters?

15 A I don't believe it was.

16 Q In other words, you had not left the scene yet?

17 A No, we hadn't.

18 Q Did you ask him at any time after that conversati
19 that you have just related to disclose his source?

20 A I did not. After he told me that he was not
21 going to cooperate, that he wanted a lawyer, I didn't ask
22 him any more questions concerning his source of supply
23 until we were at the office and he agreed to cooperate along
24 with his wife. This was the next time that I asked him
25 anything about his source of supply.

1 Dmgr 98

2 Q How did you get Mrs. Friedman to agree to
3 cooperate? Was it you who accomplished that or somebody
4 else?

5 A I spoke with her.

6 Q I'm asking you--

7 THE COURT: He said "I spoke with her." What do
8 you want him to say? Was it to you that she said, "Yes, I
9 will cooperate," or was it to somebody else?

10 THE WITNESS: No, she said it to me.

11 Q How did you persuade her to cooperate?

12 THE COURT: Did you offer her candy?

13 THE WITNESS: No, your Honor.

14 THE COURT: What did you do?

15 THE WITNESS: I told her she and her husband
16 were in trouble and it would be in their best interests to
17 cooperate.

18 Q When she got to DEA headquarters did you talk to
19 her immediately upon her coming in?

20 A I don't remember exactly when it was. It was
21 shortly after.

22 Q Did you process her?

23 A Not personally.

24 Q Did you have the conversation that you have just
25 related to her before or after she was processed?

1 bjmgr 99

2 A I don't remember.

3 Q Did you just say these few words that you have
4 just related to us and thereupon she said, "O.K., I'll
5 cooperate and I will tell you who the source is," is that
6 your testimony?

7 A There wasn't much conversation between us before
8 she agreed to cooperate.

9 Q What was her conversation?

10 A I told her--my best recollection is that I told
11 her that she and her husband were in trouble, that her
12 husband did not seem to be too concerned about her wellbeing
13 and that he was not going to cooperate either on his behalf
14 or on her behalf, and it would be in her best interest to
15 cooperate with us and to tell us the source of supply. She
16 said that she would cooperate and whether her husband did
17 or not she was going to help us, but she wanted to talk to
18 her husband first not to ask him if it was all right to
19 cooperate but just to let him know what she was going to.

20 Q Did you permit them to discuss the matter without
21 any agent being present or were you present when they talked
22 to each other?

23 A I think I was present. I don't think--I think I
24 allowed them to talk privately. I don't remember.

25 Q Mrs. Friedman testified that she was allowed to

1 bjmgr 100

2 talk finally with her husband. Would that refresh your
3 recollection?

4 A Not really. I don't remember clearly.

5 Q You don't have a clear recollection?

6 A No, I don't.

7 Q How long after Mr. Friedman had come to DEA
8 headquarters did she implicate her desire to cooperate?

9 A Shortly after.

10 Q Was it ten minutes, fifteen minutes?

11 A I don't remember because I don't remember if she
12 was processed first before I spoke with her.

13 I think I spoke with her first before she was
14 processed.

15 Q Did she ask you any questions at all about where
16 she would be incarcerated if she did not cooperate?

17 A I don't remember.

18 Q Was Riker's Island mentioned in the conversation
19 that you had with her at all?

20 A I don't recall.

21 Q If Riker's Island had been mentioned in the course
22 of the conversation you had, you would not regard that to be
23 a threat that you made to get her to cooperate, would you?

24 A No, I would not regard it as such.

25 Q Was anything said to her about her husband's law

1 bjmgr 101

2 school career in the course of this conversation?

3 A No. She mentioned it to me several times.

4 Q Was Mrs. Friedman concerned about what would
5 happen to her husband in connection with the law school
6 career?

7 A Yes.

8 Q Did you say anything to her with respect to his
9 law school career which induced her to cooperate?

10 A I don't know. The only thing that I said about
11 his law school career was that they kept pressing me to make
12 them guarantees that he would continue in law school and I
13 kept telling them that I could not make any guarantees.

14 Q And further conversation that led her to cooperate,
15 is that correct?

16 A This was after she decided to cooperate and we
17 were all in a conference room together. Mr. and Mrs. Friedman
18 and myself.

19 Q Mr. Friedman was asking about guarantees, is that
20 correct?

21 A They were both asking about guarantees.

22 Q You said you would not give them any guarantees.

23 A Correct.

24 Q Yes they still agreed to cooperate and give you
25 the name of Jeffrey Hall, is that correct?

1 sjmjr 102

Hall-Cross-Redirect

2 A Correct.

3 MR. BLOCK: I have no further questions.

4 MR. BUCHWALD: I have some questions.

5 REDIRECT EXAMINATION

6 BY MR. BUCHWALD

7 Q After they asked you about guarantees and you
8 refused to give them guarantees did Mrs. Friedman say
9 anything to Mr. Friedman?

10 A Yes, she did.

11 Q What was that?

12 A Words to the effect that "I'm going to do it.
13 I'm going to go ahead and cooperate."

14 Q At the time of the arrest did somebody either in
15 your presence or did it come to your attention, some statement
16 by a police officer from the Nutley Police Department or
17 Mr. Friedman, did anything like that come to your attention at
18 that time?

19 A Yes.

20 Q Will you say whether it was in your presence, how
21 it came to your attention and what it was and what you did?

22 A I'm not sure if it was in my presence or if one of
23 the other agents or police officers told me what was said
24 between Mr. Friedman and a Nutley, New Jersey, police officer.
25 I don't remember if I heard it myself. I was in the area when

1 bingr 103

2 it was said. I don't remember if I heard this police officer.

3 Q What was it that was reported to you?

4 MR. BLOCK: I object to it. I am going to object
5 to it.

6 THE COURT: Never mind about that. O.K. Thank you
7 very much.

8 MR. BLOCK: I have nothing further.

9 MR. DUCHWALD: I have Agent Smith and Detective
10 Giovanniello, and Mr. Smith will be long.

11 THE COURT: We will go to lunch now and return at
12 two fifteen.

13 (Luncheon recess.)

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1 cmtg

Smith-direct

AFTERNOON SESSION

2:30 p.m.

MR. BUCHWALD: Your Honor, at the lunch break I spoke to Mr. Flynn on the phone. He advised me that he can be here he believes by a quarter to four and I told him to come right in and presumably we will be ready for him by then.

THE COURT: We had better be ready for him by then.

MR. BUCHWALD: At this time, your Honor, the Government calls Mr. Alexander Smith.

A L E X A N D E R S M I T H J R., called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mr. Smith, are you a special agent with the Drug Enforcement Administration?

A Yes, sir.

Q How long have you been so employed?

A Approximately six years.

Q Are you the case agent in this case involving Mr. Friedman and Mr. Nach and Mr. Rudd?

A Yes, sir.

1 3 cmtg Smith-direct

2 surveillance that was in the vicinity had come on to
3 the block and I had taken Mr. Friedman over and I had
4 searched him and found a long pocketknife in his pocket
5 and immediately thereafter Special Agent Hall, after
6 there was a little bit of commotion there was search
7 activity in the area, we just took Mr. Friedman and
8 placed him in the back of a government vehicle.

9 THE COURT: You said something about
10 Agent Hall, or in the hall? I didn't get that.

11 THE WITNESS: I am sorry, Group Supervisor
12 Hall.

13 THE COURT: What about him?

14 THE WITNESS: Took Mr. Friedman and placed
15 him in the backseat of a government vehicle.

16 Q About how much time was there from the
17 time of the arrest of Mr. Friedman until the time he was
18 brought into the vehicle by Supervisor Hall?

19 A I would say just a little over five minutes.

20 Q What, if anything, did you do or observe
21 at that time?

22 A At that time I was leaning in the window of
23 the government vehicle, and Group Supervisor Hall read
24 Mr. Friedman his rights and then right after that
25 instructed us to go and arrest Margaret Friedman for

Smith-direct

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Q Let me direct your attention to September 24, 1975. Were you present in the vicinity of Clifton, New Jersey, when Mr. Friedman was arrested that evening?

A Yes, sir.

THE COURT: Were you actually present at the arrest?

THE WITNESS: Yes, Your Honour, as the arresting officer.

Q Would you explain to his honour where the arrest took place, who else was present at the time of the arrest and what happened immediately following the arrest?

A At approximately nine-thirty p. m. in the vicinity of Hadenfield Road and I believe Northfield Terrace I had driven around the corner following the undercover agent and the defendant, Larry Friedman, and I saw them at a mail box and the undercover officer was reaching down and picked up a large brownpaper bag. And as they started to walk back towards the undercover vehicle I got out of the car and both myself and the police officer placed Larry Friedman under arrest.

THE COURT: That was Pollini?

THE WITNESS: Yes, sir.

A (continuing) at that point of of the

1 4 cmtg Smith-direct

2 conspiracy.

3 Q Did you participate in the arrest of the
4 defendant's wife, Margaret Friedman?

5 A Yes.

6 Q Am I correct you were not in the vehicle
7 which transported Larry Friedman back to New York?

8 A No, sir, I wasn't.

9 Q Do you recall who, if anyone, you went with
10 to make the arrest of Mrs. Friedman?

11 A I went, Special Agent Michael Gray --

12 THE COURT: Is that Scotty?

13 THE WITNESS: Yes, sir?

14 A (continuing) Detective Giovanniello, I
15 believe Sergeant Paulson, both of the New York City Police
16 Department, and there was a Sergeant from the Nutley
17 Police Department. I don't recall his last name.

18 Q What, if anything, did you do after you
19 arrived at the Friedman's home in Nutley, New Jersey?

20 A After we arrived at the Friedman's home Mrs.
21 Friedman let us come into the apartment and I identified
22 myself as a special agent working for the Drug Enforcement
23 Administration, and we advised her that she was under
24 arrest for violating federal narcotic laws, conspiring
25 with her husband, Larry Friedman, and immediately thereafter

5 cmtg

Smith-direct

I read her her rights.

Q After you advised Mrs. Friedman of her constitutional rights, what, if anything, did you do?

A At that point I asked her, well Special Agent Gray went into the other rooms of the apartment to see if there were any other individuals in the apartment. Finding none we asked Mrs. Friedman if she had any valuable possessions in the apartment because we were going to have to take her to New York City, like we had taken her husband, Larry Friedman, for processing and eventual incarceration.

THE COURT: The purpose of your question was to enable her to safeguard her possessions?

THE WITNESS: Yes, sir.

MR. BLOCK: Excuse me I didn't hear.

THE COURT: I asked if the purpose of that question was if there were valuable possessions in the apartment was for the purpose of enabling her to safeguard them. The answer was yes.

A (continuing) At that point Mrs. Friedman wasn't wearing any shoes so we asked her to put some shoes on and get her coat because the weather was rather inclement. And after that we took her back to the New York regional office for processing.

1 6 cmtg

Smith-direct

2 Q Would you describe Mrs. Friedman's emotional
3 state as best you recall it in the apartment and on the
4 ride back to the Drug Enforcement Administration headquarters?

5 A Mrs. Friedman was obviously shaken and upset
6 having been arrested by federal agents, and she told us
7 that she couldn't understand why she was being arrested.
8 And after being advised of her rights I advised that she
9 had participated in the conspiracy with her husband to
10 deliver the 10,000 tablets of quaalude to the undercover
11 officer. And she also seemed a bit upset at the fact
12 that a Nutley sergeant was also with us because we were
13 later told that she had had a run-in with her husband
14 with the same Nutley sergeant during a previous arrest
15 situation.

16 After that, still continually questioning
17 us regarding why she was being arrested, we took her outside
18 to the government vehicle and transported her back and she
19 asked us if she was going to go to the Nutley Police
20 Department for any kind of processing and I advised her,
21 no, we were federal agents and it was a federal matter, we
22 would be taking her to New York. And she seemed to be a
23 little bit relieved at that fact.

24 Q During the course of the trip was she hysterical
25 in anyway or crying or acting hysterical?

1 7 cmtg Smith-direct

2 A No, she wasn't hysterical. I mean she may
3 have been crying quietly but I was driving. I didn't
4 notice it.

5 Q What, if anything, happened -- when you
6 arrived back in New York at 57 -- is that at 57th Street?

7 A Yes, sir.

8 Q Do you know when you arrived with Mrs.
9 Friedman in relation to the time that Mr. Friedman got to
10 the office?

11 A Well Mr. Friedman arrived before Mrs.
12 Friedman, and when we walked into the processing area
13 on the 18th floor with Mrs. Friedman, her husband had just
14 been finished being processed by other agents.

15 Q And what, if anything, did you do -- were
16 you able as you came in with Mrs. Friedman to see Mr.
17 Friedman?

18 A Yes, he was standing up in the processing
19 area.

20 Q And am I correct then that in the same way
21 that you could see them Mr. Friedman could see you and
22 Mrs. Friedman?

23 A Yes, as we entered the room.

24 Q What was Mrs. Friedman's emotional state
25 at that time as best you recall it?

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1 8 cmtg Smith-direct

2 A Quiet.

3 Q What, if anything, happened after you brought --
4 well did you see what was happening to Mr. Friedman at
5 that time when you came in with Mrs. Friedman?

6 A Well, to the best of my recollection I think
7 he was just wiping his hands after being fingerprinted,
8 and from what I could see the processing was already over
9 because he was then escorted into the detention area and
10 placed in a cell.

11 Q Did you stay with Mrs. Friedman?

12 A Yes.

13 Q From where you were could you see the detention
14 room in which Mr. Friedman was being kept?

15 A There was a door that was closed.

16 Q What, if anything, did you do with Mrs.
17 Friedman?

18 A Well, I processed her, fingerprinted her,
19 photographed her and took her personal history.

20 Q Incidentally, on the fingerprint reports
21 are those kept in any kind of series of numerical way so
22 that you can ascertain who was fingerprinted first?

23 A Yes. When we bring a prisoner into the
24 detention area we call the communication center and advise
25 the duty supervisor that a defendant has been brought in.

1 9 cmtg Smith-direct

2 We give him the date of birth and the name of the defendant
3 and then we give him the photo number that is going to be
4 used and it is logged in a logbook.

5 Q Also with respect to the photographs that
6 are taken of defendants as they are processed at the
7 Drug Enforcement Administration are there numericals or
8 numbers on them?

9 A Yes. When we call the communications center
10 we tell them which photo number belongs to which defendant.

11 Q Are arrest numbers assigned to defendants
12 who are processed and arrested by Drug Enforcement
13 Administration --

14 A Yes, sir.

15 Q Have you checked the numericals on the
16 photographs and the numbers assigned the fingerprints
17 and the arrest numbers to determine the order in which
18 they appear between Mr. & Mrs. Friedman?

19 MR. BLOCK: Now if your Honor please, I
20 am going to object unless we have the actual records here.

21 THE COURT: Overruled.

22 MR. BLOCK: I think it is the best evidence.

23 THE COURT: You are entitled to have it
24 for cross-examination but he is entitled to ask the question.

25 A Yes, I called the communications center and

1 10 cmg Smith direct

2 they advised me that Larry Friedman was logged --

3 THE COURT: Don't tell us what they advised
4 you. Did you check them yourself?

5 THE WITNESS: I'm sorry, your Honor. You
6 know I had looked at the photos.

7 THE COURT: We don't want a second-hand
8 report on that.

9 Q Have you checked with the photographs and
10 the numbers on the photographs?

11 A Yes, I have looked at the photograph numbers.

12 THE COURT: Are they available here?

13 MR. BUCHWALD: We have Mrs. Friedman's
14 photograph, I do not have Mr. Friedman's photograph.

15 THE COURT: Where did you check Mr.
16 Friedman's photograph?

17 THE WITNESS: In the file in the office.

18 THE COURT: And do you have his number by
19 any chance?

20 THE WITNESS: It is the one immediately
21 preceding Mrs. Friedman's photograph number, your Honor.

22 Q In addition to that do you have an independent
23 recollection here as you sit here today that when you
24 entered the 57th Street office with Mrs. Friedman that
25 Mr. Friedman had already arrived?

1 11 cmtg

2 A Yes, sir.

3 Q Would you relate to His Honor as best you
4 recall any discussions that you had with Mrs. Friedman
5 after advising her of her rights and after getting --
6 why don't we back up into the automobile on the way to
7 D.E.A. headquarters and then at the Drug Enforcement
8 Administration office.

9 A Well, we advised Mrs. Friedman that she was
10 in serious trouble, she had been arrested for conspiracy
11 to violate federal narcotics laws. And I advised her that
12 she faced five years in prison and a monetary fine for
13 her involvement and that her case was independent from
14 her husband's case, the way it was in a husband-wife type
15 thing. And she would be sentenced separately from her
16 husband. Their cases were totally separate.

17 Q What, if anything else, do you recall saying
18 or anything that she said in response to what you have told
19 us?

20 A Well, she told us that she was previously
21 employed as a substitute teacher in New Jersey and that
22 the arrest, if the school system was notified, would
23 probably terminate her career as a teacher. So I
24 just advised her that at that point in time, you know, I
25 wasn't going to notify any school system and that regarding

1 12 cmtg Smith-direct
2 her questioning as to what had happened to her and her
3 ultimate disposition, I just said that if she decided
4 she wanted to cooperate with the government and advise
5 us who the source of supply was for the 10,000 quaaludes
6 that her husband was trying to distribute she would be
7 helping herself.

8 And, it would be made known to the U.S.
9 Attorney and to the sentencing judge.

10 Q Do you recall where that conversation took
11 place?

12 A Well, it was in part during the course of
13 the ride back to New York as well as back in the processing
14 area after she had been processed.

15 Q Did there come a period of time, or a time
16 when Mrs. Friedman indicated to you that she would
17 cooperate?

18 A Yes.

19 Q Would you relate to his Honor as best you
20 recall when that was in relation to other events of the
21 evening and what she said?

22 A * After she was done being processed, Group
23 Supervisor Hall came in and we both again advised her of
24 the severity of the charges that she was faced with and
25 again that she was being treated as a separate defendant

1 13 cmtg Smith-direct

2 in the case. And that anything she chose to do to help
3 the government identify the source of the quaaludes would
4 be for her consideration only, not for anybody else's.

5 She was also advised that her husband had
6 chosen not to cooperate with the government and for either
7 consideration or else her consideration. And after again
8 telling her what the consequences of the penalty she faced
9 were, she said that she would cooperate with the government
10 regardless of whether her husband cooperated or not.

11 Q What, if anything, happened after she so
12 advised you?

13 A As I recall she had told us that the source
14 of the quaaludes was Jeffrey Nach and thereafter before
15 she --

16 THE COURT: You mean when she said she
17 would cooperate?

18 THE WITNESS: This was at the end. She said
19 she would cooperate with the government. She wanted to
20 know what she had to do as far as cooperation but I don't
21 recall her identifying Jeffrey Nach as a source until just
22 about the very end of the conversation.

23 THE COURT: How much longer do you think
24 it was then?

25 THE WITNESS: Just a matter of minutes, your

1 14 cmtg Smith-direct

2 Honor.

3 A (continuing) At that point before she did
4 anything to assist us overtly we had asked her, we wanted
5 to make telephone calls and to try to get Nach in a
6 position where we can arrest him that evening, but she --

7 Q You wanted her to call Nach and have the
8 telephone calls recorded?

9 A Yes, sir.

10 Q What, if anything, did she say about that?

11 A Well, we really didn't get into it but she
12 said she wanted to talk to her husband before she did
13 anything actively to cooperate with us.

14 Q And, what if anything, happened after that?

15 A Group Supervisor Hall asked her, you know,
16 she could, she said she wanted to speak to him alone
17 but Group Supervisor Hall wouldn't allow that. So he took
18 them into one of the interview rooms and left the door open
19 so that I could overhear the conversation.

20 THE COURT: They were in the room by
21 themselves.?

22 THE WITNESS: No, sir. They were in with
23 Group Supervisor Hall. He wouldn't allow them to be -- to
24 go alone in the room.

25 Q Then what happened?

Smith-direct

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A She was talking and she said that she was going to cooperate with the government with or without his cooperation, whether or not he wanted to himself, and Mr. Friedman again before he wanted to cooperate, before he would consent to it, started asking again for assurances that his law school wouldn't be contacted, that his law career would be preserved, that he wouldn't be prosecuted if he cooperated and Group Supervisor Hall would not give him any assurances whatsoever.

And finally Mrs. Friedman just told her husband first out that she was cooperating regardless of what he wanted to do. She was not going to go to jail and she was not going to jeopardize her own educational career.

Q Did there come a time after that when Mrs. Friedman made the telephone calls to Mr. Nach that you had requested?

A Yes, sir. Mrs. Friedman made two calls with Group Supervisor Hall and myself to Mr. Nach out in Clifton, New Jersey, and arranged to meet Mr. Nach that evening, because she had some question, or the ruse was that she didn't know where her husband was, what had happened to him during the course of this transaction, she was very concerned.

So Jeffrey Nach agreed to meet her in front of

1 16 cm/tg

Smith-direct

2 Jeffrey Nach's residence in Clifton, New Jersey.

3 Q And did you thereafter conduct surveillance
4 of that meeting?

5 A Yes. Mrs. Friedman went out and met Jeffrey
6 Nach in front of his residence in Clifton, New Jersey
7 and we followed the two of them a short distance and then
8 arrested Jeffrey Nach and made it look like Mrs. Friedman
9 was arrested also to preserve her --

10 THE COURT: On what basis was he arrested?

11 THE WITNESS: For conspiracy, your Honor.

12 THE COURT: Was the conspiracy your claim
13 that he was carrying on the conspiracy with Mrs. Friedman
14 in your presence?

15 THE WITNESS: Yes. The taped conversations,
16 during the taped conversations he admitted that he was the
17 course of supply for the 10,000 quaaludes.

18 THE COURT: I see.

19 Q Would you describe Mrs. Friedman's emotional
20 condition as best you recall at the Drug Enforcement
21 Administration to the time that she had the conversation
22 with her husband and thereafter and during the course of
23 the telephone calls and the meeting with Mr. Nach?

24 A Well, she was very calm. She was concerned
25 about her career as an educator and the consequences of being

1 18 cmtg Smith-direct

2 A No, sir. We told her that we would, you
3 know, have somebody go home with her or follow her home
4 but she declined,

5 Q The next morning, September 25, 1975, did
6 you pick up or were you one of the agents who picked Mr.
7 Friedman or Mr. Nach up from the M.C.C. facility?

8 A Yes, sir.

9 Q Did you bring them on out to the Newark
10 U.S. Attorney's office?

11 A Yes, sir.

12 Q Do you recall what other agents or police
13 officers were with you when you picked Mr. Nach and Mr.
14 Friedman up from M.C.C.?

15 A Michael Gray, Scotty Gray was with me
16 when we picked them up at M.C.C.

17 Q What happened after you arrived at the U.S.
18 Attorney's office in Newark?

19 A When we arrived there we were told that we
20 would be -- had Assistant U.S. Attorney Flynn assigned to the
21 case and we met Police Officer Pollini over in Newark
22 and we were awaiting Mrs. Friedman's arrival, but we later
23 found out that she had gone to the wrong place.

24 Q I am sorry to back up but let me just get some
25 of the time straight on the evening of the 24th. What time

1 17 cmtg Smith-direct

2 arrested and what the ultimate outcome of her cooperation
3 would lead to. And she was actually a little bit jovial
4 and during the photographing I had to tell her to serious-
5 up a little because it really wasn't much of a laughing
6 matter, having been arrested.

7 Q Was there any period of time at the Drug
8 Enforcement Administration headquarters where you would
9 describe Mrs. Friedman as hysterical or acting hysterically
10 even for a moment or two?

11 A No, sir.

12 Q Am I correct that Mr. Nach was arrested in
13 Mrs. Friedman's presence?

14 A Yes.

15 Q And thereafter was Mrs. Friedman permitted
16 to go home?

17 A Yes, sir.

18 Q Did she drive herself?

19 A Yes. She drove her vehicle, the one that
20 Larry Friedman had been operating earlier that evening
21 during the undercover operations. She drove it home and
22 she was instructed to report to the U.S. Attorney's office
23 the follwoing morning.

24 Q Did she request anybody to accompany her home
25 or drive her home?

1 19 cmtg

Smith-direct

2 was Mr. Friedman arrested in Clifton?

3 A Approximately 9:30 p.m.

4 Q What is your best recollection as to the
5 time you arrived with Mrs. Friedman at the Drug Enforcement
6 Administration headquarters?

7 A Shortly, a little after eleven o'clock p.m.

8 Q What is your best recollection as to the
9 time when Mrs. Friedman made the undercover telephone
10 call to Mr. Nach which was recorded by you?

11 A Approximately 12:15 a.m. on the 25th.

12 Q And so as the case agent in the case have you
13 written the surveillance reports and arrest reports?

14 A Yes, I did. I wrote the arrest report.

15 Q Do you have the tapes of the conversations
16 between Mr. Friedman and Mr. Nach?

17 A I don't have them.

18 Q Or copies of the tapes?

19 A I don't have them with me. I think Assistant
20 U.S. Attorney Batchelder has them in his office.

21 Q Do you know whether on the tapes the time
22 of the call is put as a preamble to the conversation?

23 A I don't remember whether it was stated. The
24 individual calling, who was called, the telephone number
25 that was being called and the agents present were listed,

1 20 cmtg Smith-direct

2 I am not sure about the time though.

3 Q But is that 12:15 figure a fairly definite
4 figure in your own mind as to the time of the call?

5 A As best I can recall, yes.

6 Q Let me get you back now to the 25th and I
7 am sorry, your Honor. On the 25th when you arrived at
8 the United States Attorney's office in Newark and I
9 believe you indicated first Mrs. Friedman was not present,
10 or left or wasn't in the office.

11 Would you relate to his Honor what happened
12 as best you can recall at that time?

13 A Scotty Gray and I took Mr. Friedman in before
14 Assistant U.S. Attorney Flynn, and at that point Mr. Flynn
15 identified himself as a U.S. attorney --

16 Q I'm sorry, did you have Mr. Nach there too?

17 A No, sir -- well, Mr. Nach was left in the
18 front office with Police Officer Pollini.

19 Q Continue.

20 A It was just previously Scotty Gray and I
21 were with Mr. Flynn and Mr. Friedman, and Scotty Gray
22 eventually he went back out with Jeffrey Nach when Mrs.
23 Friedman arrived. Mr. Flynn advised him of the charges
24 and advised him of his rights. And we had told Mr. Flynn
25 that Mr. Friedman had cooperated with us the previous night

Smith-direct

1
2 and --

3 THE COURT: Mr. or Mrs --

4 THE WITNESS: Mr.

5 THE COURT: What had he done?

6 THE WITNESS: Well, when we were going out
7 with Mrs. Friedman to arrest Jeffrey Nach, Mr. Friedman
8 said that he wanted to stay in the office because we had
9 told him that it might be useful to have him to assist us
10 in learning Jeffrey Nach's source of supply. And he
11 said that he would wait at the regional office with
12 agents in order to assist us in doing it, which he
13 ultimately did do.

14 THE COURT: You mean he ultimately
15 assisted you?

16 THE WITNESS: He assisted Scotty Gray and
17 myself to get the source of supply.

18 THE COURT: How did he do that?

19 THE WITNESS: Just convincing Jeffrey Nach
20 that it would be in his best interest to cooperate with
21 the agents.

22 Q Would you proceed with whatever Mr. Flynn
23 said to Mr. Friedman and what Mr. Friedman said to Flynn
24 or whatever conversation you had while in the office with
25 Mr. Friedman and Mr. Flynn?

22 cmtg

Smith-direct

A Well, after we had told Mr. Flynn that he had cooperated with us and that he wished to cooperate further with us, we were looking to have his bail set so that he could be released on his own recognizance, or a personal recognizance bond. And it was at that point that Mr. Friedman advised Mr. Flynn that he was a law student and Mr. Flynn was upset because he knew the consequences of an arrest or a conviction of a felony what it would do to his law career.

So at that point Mr. Friedman was asking for a lot of assurances. He wanted to walk away from the case without being charged at all and he wanted assurances that nobody would know about it if he did cooperate. Mr. Flynn would not deliver him any kind of assurance at all. Mr. Flynn went through a number of different types of diversified prosecutions, some of which I wasn't familiar with.

In case that Mr. Friedman decided to continue cooperating with the Drug Enforcement Administration he told him that the best that he could do for the time being was to have Mr. Friedman **sign a waiver of immediate arraignment** so that a **22** destruction of his career wouldn't be **consummated**. And Mr. Friedman persisted in asking for guarantees and assurances that he would not be

1 23 cmtg

Smith-direct

2 prosecuted whatsoever in the case. And Mr. Flynn again
3 would not deliver him any such assurance. He wanted
4 immunity, no immunity could be given or could even be
5 considered. Just the various types of plans of diversified
6 prosecution.

7 Q Did there come a time when Mrs. Flynn
8 arrived?

9 A Mrs. Friedman?

10 Q Mrs. Friedman, I'm sorry.

11 A Mrs. Friedman finally after going to the
12 wrong offices arrived at the U.S. Attorney's office, and
13 after we finished up interviewing Mr. Friedman and not
14 giving him any tupe of assurance, we dismissed him and
15 brought Mrs. Friedman into the office for an interview
16 which was exactly the same, and it was more concentrated
17 on her being a New Jersey school teacher and that any
18 immediate notification of the Board of Education in New
19 Jersey or any arraignment would again probably destroy
20 her career as an educator.

21 So Mr. Flynn told her that her case was
22 being treated separately and independently from her
23 husband's, and that we made none to Mr. Flynn that she
24 had cooperated the evening before and that in , with all
25 respect to her career as an educator Mr. Flynn said that

1 24 cmtg Smith-direct

2 she also would be able to sign a waiver of arraignment,
3 or given diversified prosecution with no assurance of
4 what the ultimate prosecution would be to protect her
5 career. Pending her cooperation and her husband's
6 cooperation.

7 Q Did there come a time where Mrs. Friedman
8 and Mr. Friedman were together in the office with Mr. Flynn?

9 A Yes, right after Mrs. Friedman's interview
10 we brought Mr. Friedman back into the office and again
11 Mr. Flynn reiterated what he had told both of them, that
12 they were being given no assurances whatsoever as to the
13 ultimate prosecution or disposition of the case would be.
14 For the time being they would be given the option of
15 signing the waiver of immediate arraignment.

16 And once again Mr. Friedman went back asking
17 and perceiving for assurances and immunity in the case
18 and Mr. Flynn denied any assurances whatsoever. And
19 finally Mrs. Friedman just told her husband to keep quiet,
20 this is the best you are going to get, just sign the
21 waiver and, you know, be glad that is what you have got
22 right now. And at that point both of them signed waivers
23 of arraignment and pledged their cooperation with the
24 Drug Enforcement Administration for further consideration
25 of their case.

1 25 cmtg

Smith-direct

2 MR. BUCHWALD: Would your Honor like to get
3 into the area of the nature of the cooperation to the
4 extent that it did exist afterwards?

5 THE COURT: Not for my purpose. I don't
6 know whether Mr. Block wants it.

7 MR. BLOCK: Your Honor, could I --

8 THE COURT: I don't understand the -- I
9 understand their position simply to be that there never
10 were any assurances made, that if there was cooperation
11 there would still be prosecution.

12 MR. BUCHWALD: There is a second level of
13 argument, namely, that if Mr. Flynn in fact said, as the
14 defendants suggest, or at least as I thought the defendants
15 suggested on Thursday, that this would be strongly
16 considered and they left with the impression that they
17 wouldn't be prosecuted. If he didn't say it in those
18 words, it is our position that a good faith determination
19 based on the amount of cooperation they did give would
20 have resulted even if in New Jersey in a determination to
21 prosecute.

22 THE COURT: If you want to deliver that
23 second line of defense then you had better tell me what
24 he said.

25 MR. BLOCK: Your Honor, I am a little

1 26 cmtg Smith-direct

2 uncomfortable. Could I just run out to the mens room?

3 THE COURT: Yes.

4 MR. BLOCK: I will be right back.

5 (Mr. Block leaves courtroom)

6 (Mr. Block returns to courtroom)

7 BY MR. BLOCK: *inquired*

8 Q Agent Smith, would you relate to his Honor
9 as best you recall the extent and nature of your contact
10 with Mr. Friedman following the session in Mr. Flynn's
11 office? Any contact thereafter?

12 A Immediately after the session at Mr. Flynn's
13 office I was advised by Police Officer Pollini that the
14 New York City Police Department had a prior case, they
15 had undercover purchases from Mr. Friedman in New York,
16 and that it was their responsibility to notify their
17 Internal Affairs Division who in turn would notify the
18 New York Board of Education of the case. And I just told
19 Police Officer --

20 THE COURT: The Board of Education of New
21 York?

22 THE WITNESS: Well, Mr. Friedman told us
23 that he was employed as a substitute teacher in New York
24 City. So in order to protect Mr. Friedman's utilization as
25 an informant for the Drug Enforcement Administration I

1 27 cmtg

Smith-direct

2 asked Police Officer Pollini to advise his commanding
3 officers to hold off on any notification until we can
4 make a determination on, you know, how useful Mr. Friedman
5 would be, and particularly in what kind of good faith;
6 whether he was telling us a lot of lies or whether he was
7 going to cooperate.

8 So, shortly thereafter I contacted Mr.
9 Friedman and he said that he had one particular individual
10 that was selling cocaine.

11 THE COURT: How long after the arrest did
12 you speak to him?

13 THE WITNESS: I'd say a day or so. And I,
14 you know, I tried to get some details from Mr. Friedman,
15 and he gave me some as far as details. However he was
16 concerned about meeting the individual or taking an agent
17 into meet with the individual. And because of the low-
18 level violator that this particular suspect was I
19 contacted, it was either Detective Giovanniello or Police
20 Officer Pollini and I told them that since they had an
21 active investigation, or case on Mr. Friedman, that what
22 they should do is contact him and utilize Mr. Friedman as
23 an informant.

24 And I told the police officers as well as
25 Mr. Friedman that any cases that he made for the City

1 28 cmts

Smith-direct

2 Police Department would be brought to the attention of the
3 U.S. Attorney in New Jersey and ultimately the sentencing
4 judge at the time of disposition of this case for
5 consideration. And I strongly urged Mr. Friedman that
6 with a case that he had a federal violation in New Jersey,
7 and as well as the case in New York State, I urged him
8 that it would be in his best interest to cooperate freely
9 and in good faith with the police officer because the
10 ultimate decision regarding --

11 THE COURT: I am not interested in the
12 conversations that took place. Although I can understand you
13 want to be complete about this. I would like to ask you
14 this: Did you ever ask cooperation of Mr. Friedman that
15 he did not give?

16 THE WITNESS: I personally, no, because I had
17 turned over his cooperation to the City Police Department.

18 THE COURT: All right.

19 THE WITNESS: The City Police Department --

20 THE COURT: Never mind about them.

21 THE WITNESS: All right.

22 Q At any time did Mr. Friedman provide you
23 with a list of individuals who he thought could help
24 make cases on?

25 A Not myself, no, sir.

1 29 cmtg Smith-direct

2 Q Did you ever obtain any information from
3 the New York City Police officers which you in turn
4 provided to Assistant U.S. Attorney Flynn as to the status
5 of Mr. Friedman's cooperation?

6 A I was advised --

7 Q Well I am just asking: did you get
8 information from police officers which you provided to
9 Flynn?

10 A Yes, sir.

11 Q On January 8, 1976, shortly after the
12 indictment in this case was unsealed, did you contact
13 Mr. Friedman?

14 A Yes, I did.

15 Q Had you had any contact with him, direct
16 contact with him, not reports from others about him, since
17 shortly after September 25, 1975 until January 8, 1976?

18 A None that I recall. He may have called
19 concerning his cooperation with the City Police Department
20 and I just advised him that whatever cases he made for the
21 City Police Department would be taken into consideration
22 by the U.S. Attorney.

23 Q And, on January 8, 1976, did you tell him to
24 come over to your office on 57th Street?

25 A Yes, sir.

1 30 cmtg Smith-direct

2 Q And was he again processed at that time in
3 connection with the indictment in this case?

4 A Yes, sir.

5 Q Did you have any --

6 THE COURT: Did he come voluntarily?

7 THE WITNESS: Yes, sir.

8 THE COURT: What did you tell him the
9 purpose of this summons was?

10 THE WITNESS: I told him that he had been
11 indicted by the Southern District of New York for
12 conspiracy to distribute quaaludes and that we had a warrant
13 for his arrest, and that it would be in his best interest
14 to surrender to D.E.A. agents in New York as opposed to
15 having agents go out and arrest him.

16 Q Did he say anything at that time about having
17 been promised that he wouldn't be prosecuted?

18 A No, sir.

19 Q Did he say anything at that time about any
20 understanding he had about assurances or statements which
21 Assistant United States Attorney Flynn had made?

22 A No, sir.

23 Q Did you accompany Mr. Friedman over to the
24 Southern District of New York?

25 A No, sir.

31 cmtg

Q Do you know who that was?

A I believe Agent Pavichevich.

Q During the course of the evening of September 24th and the early morning hours of September 25th did you or any other agent in your presence tell Mr. Friedman that unless he cooperated his law school would be advised of the fact of his arrest?

A No, sir.

Q On September 24th and 25th, that period, did you or any other agent in your presence tell Mr. Friedman that his wife would be held overnight and that it was not the kind of place that young women should stay at because there were lesbians or anything to that effect?

A No, sir.

MR. BUCHWALD: I have no further questions.

Q Since January 8, 1976, are you aware of any cooperation --

THE COURT: Since when?

MR. BUCHWALD: January 8, 1976.

Q (continuing) Are you aware of any cooperation which Mr. Friedman rendered either to the federal agents or the New York City Police Officers?

A No, sir.

THE COURT: Are you aware of any he received?

1 32 cmtg

Smith-direct

2 THE WITNESS: Yes, sir.

3 THE COURT: What?

4 THE WITNESS: He had given the New York
5 City Police Department a list of names, targets that he
6 would contact to cooperate. And I think there were ten
7 names on the list and he reluctantly assisted in making
8 cases on three.

9 THE COURT: But that information you got
10 from him?

11 THE WITNESS: Yes, sir.

12 BY MR. BUCHWALD:

13 Q At the time of the arrest on January 8, 1976,
14 did you say anything to Mr. Friedman -- this is during the
15 processing at D.E.A. headquarters -- about what you believed
16 the level of his cooperation to have been?

17 A Yes, sir. I advised Mr. Friedman that he --
18 again reminded him that he had been arrested in New Jersey
19 and that he had subsequently been arrested by the New York
20 City Police Department.

21 THE COURT: He reminded you?

22 THE WITNESS: No, I'm sorry, I reminded him.
23 That he had been arrested by the New York City Police
24 Department and that he now had a case in the Southern
25 District of New York. I told him that my reports from

Smith-direct

33 contg

the New York City Police Department that his level of cooperation was very unacceptable and that he had better cooperate with the City Police Department freely and in good faith in order to get the maximum amount of consideration for his now three pending cases.

MR. BUCHWALD: I have no further questions.

Do you have your case report in this case?
Is it among these files?

THE WITNESS: I believe the arrest report, I thought I saw the arrest report there.

MR. BUCHWALD: I have the January 8th arrest report.

THE COURT: Was he arrested?

THE WITNESS: Yes, your Honor, he was. On the 8th.

MR. BUCHWALD: Do you have your report for September 24-25, I gather is what Mr. Block is referring to.

THE WITNESS: I thought they were all with the files which you have.

MR. BUCHWALD: I may have them upstairs.

THE COURT: You mean he came down voluntarily and was arrested?

THE WITNESS: On the 8th of January.

1 34 cmtg

2 THE COURT: Yes.

3 THE WITNESS: I advised him we had an
4 arrest warrant and he surrendered himself and was arrested
5 at that time, yes.

6 THE COURT: What happened then? Was he
7 brought immediately before a magistrate?

8 THE WITNESS: Yes, your Honor, he was
9 processed and taken down and interviewed by Assistant U.S.
10 Attorney Flannery and then arraigned.

11 THE COURT: That is why we have these
12 problems.

13 MR. BUCHWALD: Your Honor, I understand the
14 feelings that your Honor and some others have expressed.
15 I think our own feeling toward it would be particularly
16 in light of the speedy trial act and assuming that the man
17 is freely advised in addition to the normal Miranda
18 warnings of indictment and is promptly brought before a
19 magistrate that not only the only the effect on law
20 enforcement but the effect on speedy disposition of cases --

21 THE COURT: In the last week I have had
22 about three days of hearings caused by just this very thing
23 which would have been unnecessary if there had been a lawyer
24 on hand.

25 MR. BUCHWALD: Your Honor, I would suggest

1 35 cmtg

2 without meaning to toot the horn of my office but I
3 suggest that the number of hearings that are held on
4 Miranda Warnings, advice of rights, when it comes to an
5 assistant U.S. attorney having advised a man of his rights
6 as opposed to a situation where it is solely agents are
7 far less.

8 THE COURT: I am not talking about advice
9 of rights. I am talking about this kind of proposition
10 with an assertion of promise or one thin or another.
11 Advise of right doesn't --

12 MR. BUCHWALD: For example on this case --
13 I don't know if we need this, it is somewhat of an academic
14 discussion --

15 THE COURT: This could be off the record.
16 (Off the record)

17 THE COURT: On the record.

18 MR. BLOCK: Let me ask, do you have the
19 arrest reports, or the reports that he made for September
20 24th and 25th? Because I think they are indispensable.

21 MR. BUCHWALD: Could you proceed without it
22 then I will go get it at our first break? Or do you want
23 that right now?

24 MR. BLOCK: I would really like to have it.
25 I could ask one question of the witness then maybe something

1 36 cmtg

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2 else.

3 THE COURT: Well, there is no point in
4 asking the one question. Do you want to get in touch with
5 your office, Mr. Buchwald?

6 MR. BUCHWALD: I will return in five minutes
7 and I will fetch all the files. I suspect it is in there.

8 MR. BLOCK: All right. And if I may suggest
9 this if you got any reports from the New York City Police
10 Department I would like to see those with respect to his
11 cooperation.

12 MR. BUCHWALD: Did you get anything?

13 THE WITNESS: Yes, the officer has the whole
14 file.

15 MR. BUCHWALD: Detective Giovanniello?

16 THE WITNESS: Yes, sir.

17 MR. BUCHWALD: All right.

18 MR. BLOCK: All right then I will wait for
19 him on that score.

20 (Recess)

21 THE COURT: All right, Mr. Block. Excuse
22 me, before we go ahead, Mrs. Mc Kee told me she had some
23 conversation about Mr. Flynn's arrival?

24 THE WITNESS: He is on his way, your Honor.

25 THE COURT: All right.

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Smith v. Brown

1
2 and ask him --

3 THE COURT: No, if you want me to know
4 what is in the report I will read it. But there is no
5 point in questioning him about what is in there.

6 MR. BLOCK: All right, I offer it.

7 THE COURT: All right.

8 MR. BUCHWALD: No objection.

9 THE COURT: Defendant's Exhibit B in
10 evidence.

11 (Defendant's Exhibit B marked for
12 identification.)

13 THE COURT: Now if you want to ask him
14 whether he put in anything about what happened at the D.E.A.
15 ask him and if he said no, ask him why not.

16 MR. BLOCK: Well it will speak for itself.
17 Your Honor will see it. There is nothing in fact from me.

18 THE COURT: All right.

19 BY MR. BLOCK:

20 Q Now, at the time of Mr. Friedman's arrest
21 you said something about there being a commotion?

22 A Well there were a lot of surveillance officers
23 in the vicinity.

24 Q Was there any discussion among all the
25 officers about jurisdiction in the case?

1 37 cmtg Smith-cross

2 CROSS EXAMINATION

3 BY MR. BLOCK:

4 Q Your report shows that after Mr. Friedman's
5 arrest, Mr. Witness, -- that after Friedman's arrest he
6 was taken to the D.E.A. regional office by Hall, Lieutenant
7 Lowry, Sergeant Paulson, Police Officer Pollini and Police
8 Officer Rippendele (phonetic) is that correct?

9 A Yes, sir.

10 Q Do you agree with that?

11 A Yes.

12 Q And then your report says Friedman was
13 generally transported by special agents Smith and Gray;
14 that is you and Scotty, to the metropolitan correctional
15 center for safekeeping?

16 A Subsequently, yes, sir.

17 Q Well, that is what your report says.

18 THE COURT: He said it is, Mr. Block. You
19 don't need to review the undisputed questions.

20 Q (continuing) There is nothing in your
21 report about what transpired at D.E.A. headquarters with
22 respect to Friedman and Mrs. Friedman, is there?

23 MR. BUCHWALD: Objection, your Honor, If
24 it is going to be misstated we would offer the report.

25 MR. BLOCK: Let me show it to the witness

1 39 cmtg Smith-cross

2 A The Nutley police sergeant --

3 Q Beg pardon?

4 THE COURT: He is going to answer you.

5 A The Nutley Police Department sergeant
6 stated that he wanted to take Mr. Friedman back to the
7 Nutley Police Department and he was advised that this
8 was a federal matter and he would be taken to 57th Street
9 for processing.

10 Q I see. And did the discussion with this
11 sergeant take any length of time?

12 A Mr. Friedman during this discussion had been
13 removed and put into the back of the police car, or the
14 government vehicle by Group --

15 Q I see. But how long did the discussion take?

16 A Well, I don't know how long that discussion
17 took because I left to arrest Mr. Friedman.

18 Q How long had it taken before you left? Didn't
19 it go on for awhile?

20 A No. Immediately after I had witnessed Group
21 Supervisor Hall give Mr. Friedman his rights then he
22 directed us to go over and get Mrs. Friedman.

23 Q But after Hall advised Mr. Friedman of his
24 rights wasn't there some discussion about who the arresting
25 officers were going to be; whether it was going to be the

1 40 cmtg Smith-cross

2 Nutley Police Department or the federal agents.

3 A It was a discussion that started while I
4 was frisking, searching Mr. Friedman.

5 Q Yes, well that is what I want to know.

6 A And Group Supervisor Hall during the
7 discussion, or immediately after the discussion again,
8 removed Mr. Friedman and put him in the back of the
9 government car.

10 Q And all I am asking you, sir, is how long
11 the discussion took; five minutes, ten minutes?

12 A I don't know. The entire conversation I
13 have no idea how long it took.

14 Q How long did it take before you left that
15 is what I am asking?

16 A Shortly after five minutes.

17 Q Did you say you found a knife in searching
18 Mr. Friedman?

19 A Yes.

20 Q Isn't it a fact that the knife was found by
21 another police officer in the car and not on Mr. Friedman's
22 person when you searched him?

23 A No, sir. We had him empty his pockets
24 which is standard procedure, and --

25 Q And you say you found the knife?

1 41 cmtg

Smith-cross

2 A Yes, sir.

3 Q You have testified that Mrs. Friedman arrived
4 at D.E.A. headquarters after Mr. Friedman arrived, isn't
5 that your testimony?

6 A Yes, sir.

7 Q Are you basing that on the numbers on the
8 photographs?

9 A No, sir.

10 Q Would it lead you to change your testimony
11 in any way if I were to tell you that both Mr. and Mrs.
12 Friedman have testified here that Mrs. Friedman was
13 already at D.E.A. headquarters when Mr. Friedman arrived?

14 A No, sir.

15 Q You have a very clear recollection that
16 Friedman was already there when you arrived with Mrs.
17 Friedman; is that right?

18 A Yes, sir.

19 Q Did it happen that when Mrs. Friedman was
20 questioned by Mr. Hall, by Supervisor Hall, that was done
21 in your presence, about the source; is that correct?

22 A Yes, sir.

23 Q Was that done after she had been processed?

24 A I believe so, yes, sir. Or maybe during the
25 later stages. But personal history was the last thing to be

1 42 cmtg

Smith-cross

2 done in the processing, and it was during the last part
3 of the personal history interview and --

4 Q I see. So it was while the processing was
5 in progress that this conversation between Mr. Hall and
6 Mrs. Friedman that you have related took place; is that a
7 fair statement?

8 A I am not sure as to whether the processing
9 had immediately ended or not, no.

10 Q But at any event it was very close to the
11 processing; is that correct?

12 A Yes, sir.

13 Q And is it your testimony that after Mrs.
14 Friedman had been processed or toward the end of the
15 processing that Mr. Hall told her that it would be better
16 for her if she cooperated, it would be in her interest,
17 whereupon she agreed to cooperate and disclose the name
18 of Jeffrey Nach at that point; is that your testimony?

19 A Yes, sir.

20 Q And is it your testimony that it was after
21 she had disclosed the name of Jeffrey Nach that she asked
22 to speak to her husband?

23 A I believe it was in that order, yes, sir.

24 Q That is what you said in the affidavit you
25 submitted on this motion; isn't that correct?

1 43 cmtg Smith-cross

2 A It was simultaneous with knowing that it
3 was Mr. Nach and then asking, yes.

4 Q You mean she said, my source is Jeffrey
5 Nach and I would like to speak to my husband?

6 A "But I want to speak to my husband before I
7 do anything for the agents to help assist to arrest Mr.
8 Nach."

9 Q I see. In other words, there had been a
10 discussion after she revealed the name of Nach about
11 whether or not she would assist in facilitating Nach's
12 arrest and talking to him on the phone, is that what you
13 are saying?

14 A She advised us that she wanted --

15 Q Would you answer my question, please?

16 THE COURT: Let him answer it, Mr. Block.

17 A She said she wanted to speak to her husband
18 before she did any cooperation

19 Q What I am suggesting to you is that, and please
20 follow me, first she gives the name of Jeffrey Nach; is
21 that right?

22 A I believe -- yes, I believe so.

23 Q And then she is asked, well would you be
24 willing to engage Jeffrey Nach in a telephone conversation
25 to get him to make certain admissions and so forth, and

1 44 cmtg Smith-cross

2 along those lines that subject was then raised with her;
3 is that correct?

4 A I believe she was advised of what her
5 cooperation would entail. What we wanted to do. And
6 then she told us that her source was Jeffrey Nach and that
7 she wanted to talk to her husband before she did anything
8 further.

9 Q Like make the telephone calls?

10 A Yes, sir.

11 Q All right. Are you aware that Mr. Hall in
12 his affidavit on this motion said --

13 MR. BUCHWALD: Your Honor, I am going to
14 object. Mr. Hall was here, Mr. Hall was cross-examined --

15 THE COURT: No, it is perfectly proper to
16 ask one witness when he agrees with what another witness
17 said.

18 Q (continuing) Are you aware that Mr. Hall
19 said in his affidavit and testified here that it was not
20 until after Mrs. Friedman and Mr. Friedman had spoken
21 together that Mrs. Friedman revealed the name of the
22 source? Are you aware of that?

23 THE COURT: Would you refer me to that
24 portion of the affidavit?

25 MR. BLOCK: Yes, sir.

1 45 cmtg

Smith-cross

2 A No, sir, I haven't had any discussion with
3 Group Supervisor Hall regarding --

4 MR. BLOCK: It is Paragraph 4 and I am
5 directing your attention, your Honor, to the last sentence
6 of page 2 of Halls' affidavit on this motion.

7 Q You are not aware of that?

8 A I haven't had any discussion with him
9 regarding his affidavit or his testimony.

10 Q And does what Mr. Hall said -- and you can
11 take it from me that I am quoting his affidavit and
12 his testimony correctly -- does that refresh your
13 recollection as to the sequence of events?

14 A No, sir.

15 Q In other words you are saying that your
16 account is correct?

17 THE COURT: He is saying that is what he
18 remembers.

19 Q Is that right?

20 A Yes, sir.

21 Q When Mrs. Friedman got to the D.E.A. headquarters
22 was she crying at any time?

23 A I didn't notice her crying. If she was it
24 was quietly.

25 Q Did you have her under observation at all times

1 46 cmtg Smith-cross

2 or were you engaged in --

3 A Well, I was preparing to process her. So
4 I mean she may have been sitting down in the processing
5 area while I finished my preparations.

6 Q She may have been sitting down and crying
7 and you didn't notice because you were engaged in
8 something else; is that what you are saying?

9 A Well, I didn't notice or hear her crying.

10 Q When Mrs. Friedman was about to have her
11 picture, her photograph taken in connection with her arrest,
12 did you tell her any jokes to get her laughing?

13 A No, sir. I told her to get more serious
14 because she was in a rather jovial mood. Because this was
15 a serious matter.

16 Q Were you aware that at the time Mr. and Mrs.
17 Friedman had been married for about a month?

18 A I don't remember.

19 Q Had there been any discussion with Mrs.
20 Friedman about where she was going to spend the night
21 in connection with her arrest?

22 A No, sir. The only discussion that we had was
23 that if she cooperated with the government there was a
24 chance she would not have to be incarcerated overnight.

25 THE COURT: Did you indicate that she would

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47 cmtg
Smith-cross
have to be incarcerated overnight otherwise?

THE WITNESS: Yes, sir.

THE COURT: Will you tell us what that conversation was?

THE WITNESS: Well, we just told her that the normal procedure was to incarcerate her after being processed until arraignment in the morning.

Q And was there any discussion about where she would be incarcerated, namely at Rikers Island?

A No, we don't incarcerate prisoners there.

Q Beg pardon?

A We don't incarcerate our prisoners at Rikers Island.

THE COURT: You don't now but did you then?

THE WITNESS: I don't remember, your Honor. I thought it was metropolitan correctional facility.

THE COURT: That's right but not until sometime thereafter. Those quarters were not appropriate and I imagine you recall prisoners were incarcerated at Rikers Island until the M.C.C. was opened.

THE WITNESS: I never had occasion to incarcerate a female so I wouldn't know.

Q Well, didn't Mrs. Friedman ask any questions during the time she was in your company after her arrest

1 48 cmtg Smith-cross

2 as to where she would be incarcerated if she was kept
3 overnight?

4 A She was more concerned in her line of --

5 Q Didn't she ask you any questions on that
6 subject?

7 A She didn't ask me, no.

8 Q Did she ask anybody in your presence as to
9 where she would be put if she were to be held overnight?

10 A No, sir.

11 THE COURT: Are you saying, Mr. Smith, to
12 get back to this question of Rikers Island, that Mrs.
13 Friedman was the first female that you arrested on --
14 well, arrested? Or at night?

15 THE WITNESS: Well I had been working with
16 the Task Force before that, your Honor, and any females
17 that were arrested were processed by police department
18 personnel so I had no reason to incarcerate them.

19 THE COURT: So she was the first one that
20 you arrested and processed; is that right?

21 THE WITNESS: Yes, sir.

22 Q Going to the 25th of September when you were
23 in the -- about to go to see Assistant U.S. Attorney, Flynn,
24 you went in first, is that correct, to talk to Flynn?

25 A Yes, sir.

49 cmtg Smith-cross

Q And you told him generally about what the case was as against the prisoners, namely Friedman, Mrs. Friedman and Jeffrey Nach; is that correct?

A Yes, sir.

Q And had you had any conversation prior to going into see Mr. Flynn with Mr. Friedman about whether or not he could help in making any cases against other people he knew who were dealing in drugs?

A Well he had already cooperated the evening before and I told him that I would make it known during the interview with Assistant U.S. Attorney, Flynn, that if he chose to cooperate and make any additional cases I would let the assistant U.S. attorney know at that time.

Q Well I know, but what I am talking about is before you went into see Flynn, had you discussed with Friedman any other people who were dealing in drugs besides Jeffrey Nach?

A By name, no, sir.

Q Had he indicated that he knew other people, whether he mentioned the names or not, who were dealing in drugs?

A Yes, sir.

Q And had you discussed with him the possibility of his making cases against those people in the course of

1 50 cmtg

2 his cooperation?

3 A Yes, sir.

4 Q And did you tell that to Mr. Flynn when you
5 went into see Mr. Flynn to tell him about the case?

6 A Yes, sir.

7 Q Now, did you say anything to Mr. Friedman
8 after he had evidenced a desire to cooperate that after
9 working with the federal agents for a couple of weeks
10 he would regard them as friends, something along those
11 lines?

12 A I don't understand your question, I'm sorry.

13 Q Well I am asking you, did Mr. Friedman say
14 in this conversation before you went into see Flynn, or
15 did you tell Mr. --

16 MR. BLOCK: I withdraw it --

17 Q Did you tell Mr. Friedman at any time when
18 you were discussing his working with the agents to make
19 cases that after a couple of weeks he would regard the
20 federal agents as his friends?

21 A No. No, sir.

22 Q You didn't say anything like that?

23 A No, sir.

24 Q Was Scotty present at any time in Flynn's
25 office while you were there with Mr. Flynn?

1 51 cmtg Smith-cross

2 A Just at the beginning of the interview.

3 Q Just at the beginning. All right. Now,

4 when you had the interview with Mr. Flynn, or --

5 MR. BLOCK: Withdraw it.

6 Q When you had the interview with Mr. Friedman
7 in the presence of Mr. Flynn, were you in the office the
8 whole time that Friedman was there?

9 A Yes, sir.

10 Q Did Friedman say anything to Mr. Flynn
11 about being worried about the case in Brooklyn against him?

12 A No, sir, not that I remember.

13 Q Did you know that there was a case in
14 Brooklyn against him at the time?

15 A No, sir.

16 Q I draw your attention to Paragraph 1 of your
17 report which is Exhibit B and ask you if that refreshes
18 your recollection?

19 (Handing)

20 Q Doesn't that -- possibly I misled you
21 by talking about Brooklyn. That indicates something in
22 Queens doesn't it? Do you see that Paragraph 1 in your
23 report?

24 A Yes, sir.

25 Q Did you know about that at the time you were

1 52 cmtg

2 in Flynn's office?

3 A No, sir.

4 Q In other words, you didn't know about any
5 prior sales by Mr. Friedman that occurred in either
6 Brooklyn or Queens at the time you were in Mr. Flynn's
7 office?

8 A No, sir. Oh, at the time we were physically
9 in Mr. Flynn's office with Mr. Friedman?

10 Q Yes.

11 THE COURT: Yes.

12 A No, sir.

13 Q So that the allusion to the reports of the
14 New York City Police Department with respect to prior
15 sales by Friedman as incorporated in your report is
16 information you got after you had had the interview with
17 Mr. Flynn; is that correct?

18 A Immediately after, yes.

19 Q Because I notice the date of your report is
20 September 30.

21 A Yes, sir.

22 Q So you learned about it after you had been
23 in Mr. Flynn's office with the defendant?

24 A Yes, sir.

25 Q And you are clear now that Mr. Friedman didn't

1 53 cmtg

Smith-cross

2 say anything about my involvement with the Brooklyn or
3 Queens police in connection with prior sales?

4 A No, sir.

5 THE COURT: You mean, no, he did not?

6 THE WITNESS: I'm sorry. No, he did not know
7 about the case.

8 Q Do you have any notes at all on your
9 conversations with Mr. Friedman about his cooperation?

10 A No, sir.

11 Q Is this a report of yours which is Defendant's
12 Exhibit B in this case; is this the only thing you have
13 with respect to this matter?

14 A This particular case --

15 Q No, with respect to the events involving
16 Friedman and Mrs. Friedman.

17 A On this particular day, yes, there would
18 be a case report. But just merely -- it is just a summary
19 of this.

20 Q So you don't have any other notes?

21 A No, sir.

22 Q And what you are giving us here is from your
23 recollection; is that correct?

24 A Yes, sir.

25 Q Did you tell Mr. Flynn about Mr. Friedman

1 54 cmtg

Smith-cross

2 having helped to get Nach to reveal his source?

3 A During the interview?

4 Q Yes.

5 A Yes, sir.

6 Q And that was before Mr. Friedman came in;
7 is that correct?

8 A Yes, sir.

9 Q You didn't say anything to Mr. Flynn at all
10 about --

11 MR. BLOCK: I withdraw it.

12 Q When Mr. Friedman came into the office, is
13 one of the first things he said that he was going to
14 law school?

15 A No, sir.

16 Q Well after he had been warned of his rights
17 and there was some colloquy then Mr. Friedman brought up
18 the fact that he was going to law school; isn't that right?

19 A At the end of the conversation, as we were
20 prepared to leave.

21 Q At that point did Mr. Flynn ask Mr. Friedman
22 to step out, and did you remain in the room and did you have
23 a discussion with Mr. Flynn at that time?

24 A I believe so, regarding the fact that he was
25 in law school.

1 55 cmtg

Smith-cross

2 Q So, Friedman is excused at the time he
3 talks about being involved at law school and you and Mr.
4 Flynn have a conversation in his absence; is that correct?

5 A Yes, sir.

6 Q Did Mr. Flynn appear very surprised and in
7 effect thunder-struck when he got this information?

8 A He was very disappointed in the conduct of
9 the defendant.

10 Q In other words, he thought it was stupid
11 for him to have been involved with drugs when he was
12 trying to become a lawyer?

13 A Yes, sir.

14 Q He reflected that; is that right?

15 A Yes, sir.

16 Q While Friedman was out of the room and you
17 talked to Mr. Flynn, did Mr. Flynn indicate to you that
18 he wanted to do everything possible to enable this young
19 man to be able to practice law?

20 A Well, Mr. Flynn indicated --

21 Q No, did he? Yes or no.

22 THE COURT: I will take a verbal answer.

23 A Mr. Flynn sat down and just advised me
24 that if we took him across the street and arraigned him
25 before a magistrate his law career would be finished within

1 56 cmtg

Smith-cross

2 twenty seconds or so. And we thought that if Mr. Friedman
3 was going to act in good faith and cooperate that we
4 would defer prosecution and explore all the alternatives
5 so that there was a chance he wouldn't have to plead to
6 a felony or given some alternative prosecution.

7 Q And, was there a discussion between you
8 and Mr. Flynn on that occasion about not prosecuting him
9 at all for this case if he went ahead and made other cases?

10 A No, sir, there was going to be some type of
11 prosecution.

12 Q Now then, Mr. Friedman was called back into
13 the room; isn't that right?

14 A Yes, sir.

15 Q Now, Mr. Friedman is in the room and you and
16 Mr. Flynn are in the room and did you hear Mr. Flynn say
17 at any time in the course of this conversation, Mr.
18 Friedman -- you know, I wasn't there so it is in substance
19 and effect -- "Mr. Friedman you will be able to practice
20 law, don't worry"?

21 A Absolutely not.

22 Q Nothing like that was said at all?

23 A No, sir.

24 Q Was there any discussion after Mr. Friedman
25 came back into the room about Mr. Friedman making cases?

1 57 cmtg Smith-cross

2 A Well, there was a discussion what he would
3 have to do as far as his cooperation.

4 Q And did that involve making cases?

5 A Yes, sir.

6 Q What was he supposed to get in return for
7 making the cases? Didn't Mr. Friedman ask that question?

8 A He was asking for guarantees that he
9 wouldn't be prosecuted.

10 Q Did he use the word "guarantee"?

11 A Yes.

12 Q Well let me put it this way: did Mr. Friedman
13 say in substance and effect, look I have already
14 cooperated, we have named Jeffrey Nach as a source, we
15 have gotten Jeffrey Nach to give his source, now if I
16 go out and work with the agents and make further cases,
17 what is going to happen to me? Did Mr. Friedman ask
18 questions along those lines?

19 A Yes, sir.

20 Q And what did Mr. Flynn say in response to
21 that? He did the talking didn't he?

22 A Well considering I was --

23 Q Did you do any talking?

24 A Yes, sir.

25 Q Well I am interested in what Mr. Flynn said.

1 58 cmtg Smith-cross

2 And what did Mr. Flynn say in response to a question along
3 those lines by Mr. Friedman?

4 A Mr. Flynn told Mr. Friedman that any
5 cooperation that he gave to the Drug Enforcement
6 Administration would be made known to him and would be made
7 known to a judge at the time of the final disposition of the
8 case.

9 Q Well now, Mr. Smith, you know that that is
10 a routine verbiage that is said by the agents all the time;
11 isn't that right?

12 A It is used, yes.

13 Q And, are you telling us that that is what is
14 said because it is what is routinely said or are you
15 telling us that this is what was said because this was
16 what Mr. Flynn actually said on that occasion?

17 A That is what he actually said and that is what
18 was meant.

19 Q Did Mr. Friedman accept that and say, okay,
20 as long as it is brought to the attention of the judge and
21 my law school career is completely demolished I will go
22 out and make additional cases? Is that what you want this
23 court to believe?

24 THE COURT: Oh, come on.

25 A I'm sorry.

1 59 cmtg

Smith-cross

2 Q Did Mr. Friedman say --

3 THE COURT: Do you want to ask him what the
4 defendant said under those circumstances --

5 Q (continuing) Did Mr. Friedman say, well
6 look if you are going to prosecute me my law career is
7 at an end and here if I am going out and making these cases
8 I should get something more of a break, I shouldn't be
9 prosecuted at all.

10 Did Mr. Friedman say anything along those
11 lines?

12 A Mr. Friedman constantly asked for guarantees
13 of no prosecution and that his law school would not be
14 notified.

15 THE COURT: What I am a little confused
16 about is this: there has been all this worry and I
17 credit the defendant and yourself for it, Mr. Friedman's
18 law school situation. What possibilities did you and Mr.
19 Flynn talk about that could involve a continued prosecution
20 without raising the same problems as the one you were then
21 faced with?

22 THE WITNESS: Well at the time, your Honor, I
23 believe that youth correction was suggested or brought
24 forth and under those circumstances if his records were
25 expunged they wouldn't be revealed at the time the bar

1 60 cmtg

Smith-cross

2 made any inquiries. I believe that something called the
3 Brooklyn Plan, which I don't know what --

4 THE COURT: That is just a fancy name for
5 deferred prosecution.

6 THE WITNESS: Okay. But other than that
7 that was the only --

8 THE COURT: It doesn't do any good to defer
9 prosecution unless it is deferred permanently.

10 THE WITNESS: Permanently.

11 THE COURT: I mean in a case like this.

12 THE WITNESS: Yes, sir.

13 THE COURT: And deferred prosecution
14 as I understand it is a situation in which the decision
15 whether prosecution will occur is put off for a period
16 to determine whether the defendant cooperates on a
17 reasonable basis and if he does then the proposed
18 prosecution is dropped.

19 Is that what you mean by deferred prosecution?

20 THE WITNESS: Well after a review of the
21 defendant's good faith and cooperation then an alternate
22 type of prosecution which might enable him, such as the
23 Youth Correction Act, would be taken into consideration
24 as a suitable alternative. All the --

25 THE COURT: That is a variation I suppose.

1 61 cmtg Smith-cross

2 Q Were you aware of how old the defendant was
3 at the time?

4 A How old?

5 Q Yes. Twenty-seven. Is it your understanding
6 that at the age of 27 he is eligible for the Youth
7 Correction Act treatment? Is that your impression?

8 A I was going by what Mr. Flynn had said.

9 Q But in any event it was very clear you are
10 saying that in spite of Mr. Friedman's anxiety about
11 his law school career he was nevertheless going to be
12 prosecuted; is that correct? In some way or another?

13 A Ultimately, yes, he would be.

14 Q Let me ask you something: were you aware that
15 very shortly after Mr. Friedman left Mr. Flynn's office
16 he was allowed to go home at that time, there was no
17 arraignment; is that right?

18 A Yes, sir.

19 Q And so this was on the 25th of September
20 and were you aware that a few days later on October 8, 1975,
21 he was indicted in Brooklyn?

22 A I was notified by the City Police Department.

23 Q Wasn't that the result of a misunderstanding?
24 Did you ever hear about that? As between the Brooklyn
25 Police Department and the defendant?

Smith-cross

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2 A No, sir.

3 Q Did you ever hear that Mr. Pollini called up
4 Mr. Friedman -- say Police Officer Pollini he called up
5 Mr. Friedman a day or so -- early the following week, you
6 know, after he had seen Mr. Flynn, and said, "Are you
7 ready to cooperate?" And Mr. Friedman said, "Well, I
8 thought I was going to cooperate with the federal agents,"
9 and then Friedman says he then called Mr. Flynn and Mr.
10 Flynn said, "Yes you will work with the federal agents,"
11 did you ever hear any of that?

12 A No, sir.

13 Q Did you ever have any conversation with Mr.
14 Friedman about the prosecution in Brooklyn?

15 A I was told at the time of his arrest by the
16 New York City Police Department. I told Mr. Friedman
17 that because the cases that were rather insignificant in
18 nature regarding our bureau that he should cooperate with
19 the City Police Department. And it was either Police Officer
20 Pollini or Detective Giovanniello. And that any cases that
21 he made for the City Police Department would be made known
22 to assistant U.S. attorney Flynn.

23 Q All right. Now, after Mr. Friedman had been
24 indicted in Brooklyn on October 8th are you aware that
25 from October 8th until about sometime later, I am not sure

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Smith-cross

exactly when, that Mr. Friedman worked with police officer
Giovanniello.

A Yes, sir.

Q And are you aware that Mr. Friedman arranged
for the police to make arrests in three separate cases?
Do you know about that?

A Yes, sir.

Q And did those cases involve a fellow named
Danziger?

A Yes, sir.

THE COURT: All of them?

MR. BLOCK: No, no, that was one case.

A fellow named Danziger.

THE COURT: Giovanniello is going to
testify, can't he --

Q In any event you were told about three
separate cases that Friedman helped to make; is that right?

A Yes, sir.

Q And two of them involved pills and one
involved cocaine; is that correct?

A Yes, sir.

Q Did you ever report that information to Mr.
Flynn?

A Yes, sir.

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Smith-cross

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2 Q How?

3 A By telephone.

4 Q Nothing in writing?

5 A No, sir.

6 Q Did you ever tell Mr. Flynn that Mr.

7 Friedman had been prosecuted in Brooklyn?

8 A I don't recall whether I did.

9 Q When did you tell Mr. Flynn about the three
10 cases that he had made with Giovanniello?

11 A I don't recall when. I just told him --

12 THE COURT: I really don't understand
13 what difference it would make whether Flynn was advised
14 or not, all the --15 MR. BLOCK: Well, I take the position
16 that they sort of washed their hands of this lad.17 THE COURT: Well, they may have washed their
18 hands, or not, but the question is what they promised
19 him.20 Q And then when Mr. -- you were in touch with
21 Mr. Friedman when the indictment came down in the Southern
22 District here; isn't that correct?

23 A Not until January.

24 Q That is what I mean.

25 A Yes, sir.

1 65 cmtg

Smith-cross

2 Q

In other words, you mean it came down and
3 it was sealed and it wasn't opened until January and
4 at that time you got in touch with Mr. Friedman?

5 A

Yes, sir.

6 Q

And, did you tell Mr. Friedman when you spoke
7 to him that you were cleaning up the matter in the Southern
8 District or that that is what the indictment represented?
9 Something along those lines?

10 A

No, sir, I don't --

11 Q

Did Mr. Friedman ask you how come he was
12 being prosecuted in the Southern District?

13 A

He didn't ask the --

14 THE COURT: Let me ask you these questions,

15 Agent. Were you surprised when Mr. Friedman was indicted
16 in the Southern District?

17 THE WITNESS: No, sir.

18 THE COURT: You know, you and Mr. Flynn

19 asked him to cooperate and at least he did cooperate to
20 some extent apparently, and you indicated he gave the
21 names of three people and of course he and Mrs. Friedman
22 gave the name of Nach: . Without going into the
23 morality of the cooperation, what did he get out of what he
24 did?

25 THE WITNESS: Well, when we started, we

1 66 cmtg Smith-cross
2 commenced the proceedings, the conspiracy proceedings
3 we were advised that all of the drugs had come through the
4 City of New York. And we told Mr. Flynn that we were going
5 to prosecute for the conspiracy in New York City and that
6 I believe the discussion between Mr. Flynn and
7 Mr. Batchelder in this office were that they would
8 nolle one case with the other. That would combine the
9 two cases for Southern District prosecution, because of
10 the conspiracy.

11 THE COURT: You mean the New Jersey case
12 was nolle in effect?

13 THE WITNESS: It was supposed to be combined
14 with the Southern District cases, yes.

15 THE COURT: How does that help Mr. Friedman?
16 If you try for both things in two jurisdictions as you
17 probably know he could have been convicted in both places.
18 I mean if they are exactly the same.

19 THE WITNESS: No, they are not, your Honor.
20 The New Jersey case was strictly substantive. And the
21 New York was strictly conspiracy.

22 THE COURT: Do you expect me to be
23 impressed by that distinction?

24 THE WITNESS: Well, I mean we convicted one
25 of the defendants the same way.

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Smith-cross

2 THE COURT: I know. I have been sitting
3 on this case now for six months. But I am baffled as to
4 what you think you gave somebody who gave you some
5 cooperation anyway.

6 THE WITNESS: Well, I --

7 THE COURT: I don't know that he is even
8 entitled to get off because I haven't made up my mind yet.
9 That is what the hearing is all about. But I am baffled.
10 You and Mr. Flynn asked for cooperation, he cooperates,
11 maybe not to your utter satisfaction and he is right back
12 where he was, isn't he?

13 THE WITNESS: Well, his cooperation was very
14 reluctant and very incomplete according to the City
15 Police Department.

16 THE COURT: Is that the basis upon which
17 you think he ought to be prosecuted? If it is so, then
18 we haven't heard anything yet that deals with this. Well
19 I don't want to take this out on you personally. You
20 didn't make the decision.

21 THE WITNESS: No, we didn't promise him he
22 would not be prosecuted. There were no assurances given.

23 MR. BLOCK: I have no further questions.

24 MR. BUCHWALD: I have no further questions,
25 your Honor.

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2 THE COURT: Thank you very much.

3 (Witness excused)

4 MR. BUCHWALD: Mr. Block, I think will
5 acknowledge on the record that he did get this in May
6 from Mr. Bachelder.

7 MR. BLOCK: I inspected it in May but I
8 wanted to inspect it in connection with this testimony.

9 THE COURT: All right. Call your next
10 witness.

11 MR. BUCHWALD: Mr. Giovanniello.

12 In line with what your Honor was suggesting
13 to Agent Smith, it is our contention that the agreement,
14 they did not make up their mind right there about
15 prosecution --

16 THE COURT: Oh, I know that, but you are
17 dealing with laymen. You all talk as if everybody was
18 a lawyer.

19 D E T E C T I V E M I C H A E L G I O V A N N I
20 B L O C K, called as a witness by the Government, being
21 first duly sworn testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BUCHWALD:

24 Q Detective, are you employed by the New
25 York City Police Department?

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2 A Yes, sir.

3 Q How long have you been so employed?

4 A Approximately 19 years.

5 Q Are you assigned to Queens Narcotics?

6 A Yes, sir.

7 Q Let me direct your attention to the evening
8 of September 24, 1975. Were you present in the vicinity
9 of Clifton, New Jersey, when Mr. Friedman was arrested?

10 A Yes, I was.

11 Q Following the arrest did you go with
12 Special Agent Alexander Smith and others to the Friedman's
13 home to effect the arrest of Mrs. Friedman?

14 A Yes, sir.

15 Q At Mrs. Friedman's home --

16 MR. BUCHWALD: If your Honor, please, I will
17 concede this testimony will be the same as the other
18 agents with respect to Mrs. Friedman. Can we get right
19 down to the cooperation?

20 THE COURT: We will assume his testimony
21 was the same as the circumstances of the two arrests.

22 Q Were you present on September 25th in the
23 United States Attorney's office?

24 A No, sir.

25 Q Did there come a time after September 25th

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Giovanniello-direct

when you were in contact either with federal agents or with Mr. Friedman himself concerning Mr. Friedman cooperating with you and the police department?

A Yes.

Q Would you relate to his Honor what happened first? When did you first hear about the possibility of Mr. Friedman's cooperation and what it entailed?

A I don't recall the exact date but thereafter Agent Smith had told me that Mr. and Mrs. Friedman were cooperating. On I believe it was October 8th I had arrested Mr. Friedman for two sales in Kings County.

THE COURT: When had those sales occurred?

THE WITNESS: During the summer months. One was July 23, that was for 87 quaaludes and August 1st for a hundred amphetamines.

THE COURT: And you arrested him on October 8th?

THE WITNESS: Yes, your Honor.

THE COURT: That was after an indictment; is that right?

THE WITNESS: That's correct, your Honor.

THE COURT: All right.

Q Between September 24th and October 8th had

1 71 cmtg

Giovannilello-direct

2 there been any cooperation by Mr. Friedman with the New
3 York City Police Department?

4 A None.

5 THE COURT: Had there been any refusals?

6 THE WITNESS: Well, we didn't discuss his
7 cooperation for the New York City Police Department
8 until October -- until when we arrested him in the
9 Brooklyn D.A.'s office.

10 THE COURT: So the cooperation with you
11 people is irrelevant until October 8th?

12 THE WITNESS: Right, that is correct, your
13 Honor.

14 THE COURT: All right.

15 Q What, if anything, happened on October 8th
16 or thereafter in the way of cooperation?

17 A The subject agreed to cooperate.

18 THE COURT: What is subject?

19 A (continuing) I'm sorry, Mr. Friedman agreed
20 to cooperate. Mr. Friedman was debriefed and he stated to
21 me that he knew approximately ten individuals who were
22 dealing in narcotics traffic.

23 THE COURT: Yes.

24 A (continuing) I had set up guidelines with
25 Mr. Friedman relative to his cooperation with us, the New

1 72 cmtg Giovanniello-direct
2 York City Police Department. Now over a period of time
3 he gave three individuals who were dealing in narcotic
4 traffic.

5 THE COURT: Well look, when he said he
6 knew ten people, in my innocent way , if I had been
7 sitting there I would have said, do you know who they
8 are? What did you say to him?

9 THE WITNESS: He gave me the names of the
10 individuals.

11 THE COURT: Well what do you mean he
12 cooperated about the three?

13 THE WITNESS: He said he would gain
14 information and he would introduce an undercover to these
15 ten individuals. Now we had problems; he lived in New
16 Jersey and I was in Queens County. He stated to me he
17 was unable to get to Queens County, he couldn't communicate
18 with me. So I had spoken to my commanding officer and
19 I had set up a system where he could call me and reverse
20 the charges and charge it to the New York City Police
21 Department.

22 THE COURT: All right.

23 THE WITNESS: Okay. One other problem was
24 he said he was going to school, he was going to law
25 school. And I said, "Well, what days do you have off?"

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Giovanniello-direct

2 He says, "We had nights. I said, "Well, we can get to-
3 gether Wednesday nights. Come into the city .or during
4 the day.

5 THE COURT: All right.

6 THE WITNESS: There were times where like
7 a period of time would go by he wouldn't communicate
8 with me. So during a span, from I believe it was October
9 to about January we only met on three occasions.

10 BY MR. BUCHWALD:

11 Q Would you relate briefly to his Honor what
12 those three occasions were and I gather this had something
13 to do with the three individuals?

14 A One subject we bought forty pills off.
15 Another subject we bought a hundred pills off. And
16 another subject we -- Mr. Friedman was present, we
17 bought thirty-seven grains, but on a second buy the
18 undercover made a buy of one-eighth of an ounce.

19 THE COURT: Of what? Cocaine?

20 THE WITNESS: That is correct, your Honor.

21 Q That is thirty-seven grains or grams?

22 A No, grains.

23 Q On the second occasion you referred to I
24 take it Mr. Friedman was not present?

25 A No, the introduction was made and the deal was

1 74 cmtg Giovanniel -direct

2 transpired between the undercover and the individual.

3 Q Was the undercover officer -- The sales
4 back in July and August, had they also involved officer
5 Pollini then acting in an undercover capacity?

6 A That's correct.

7 Q Had Mr. Pollini advised you of discussions had
8 between Mr. Friedman and himself during the course of
9 those negotiations in July and August?

10 A Yes. I was in communication with the
11 undercover, and he stated that -- Mr. Friedman was capable
12 of getting larger quantities of legitimate drugs that
13 were illegally diverted.

14 Q During the sale --

15 THE COURT: Pollini told you that?

16 THE WITNESS: Yes.

17 THE COURT: Did he say what the source of
18 his information was to that affect?

19 THE WITNESS: No.

20 Q The sale on September 24, or the almost sale
21 on September 24th when Mr. Friedman went with an undercover
22 officer to the mailbox in New Jersey, how many pills were
23 there?

24 A I believe about 10,000.

25 THE COURT: When was this? I'm sorry.

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2 THE WITNESS: The day of his arrest.

3 Q Following the arrest and Mr. Friedman and
4 Mrs. Friedman telling about Mr. Nach in connection with
5 the ten names that Mr. Friedman gave you, did he indicate
6 at any time the quantity or amounts of pills or narcotics
7 that these people dealt in or the people he knew dealt in?

8 THE COURT: Look, I am tired of your
9 asking whether he told him such and such. If you want
10 to find out whether they asked him something and they
11 didn't get the information that is something else. It seems
12 to me that to the extent we are talking about whether
13 there was genuine cooperation here it is to be measured
14 by a refusal to give information, not by whether somebody
15 happened to say something.

16 Do you follow my thinking?

17 MR. BUCHWALD: I think I understand what your
18 Honor is saying.

19 THE COURT: You didn't ask him. I can
20 at least make a finding that there was anything improper
21 about not saying anything. Did you ask him anything about
22 quantity?

23 THE WITNESS: Yes, sir.

24 THE COURT: What did he answer you?

25 THE WITNESS: Well, there was one subject who

1 76 cmtg Giovanniello-direct
2 had lived in his apartment. He used to live in Brooklyn.
3 There was two girls who lived in his apartment in
4 Brooklyn who I was very much interested -- they were
5 involved in the investigation. And he said they had in
6 their possession like three or four thousand, I believe
7 quaaludes. And the subject had never pursued that matter
8 as far as --

9 Q When you say "subject," are you referring to
10 Mr. Friedman?

11 A Mr. Friedman.

12 THE COURT: And you say he had never
13 pursued or he didn't pursue it after he told you?

14 THE WITNESS: After he told me.

15 Q Do you recall any other things that
16 Mr. Friedman told you he might be able to do which he
17 then did not pursue or didn't do?

18 A Well, the other individuals, like I told him
19 to go out and talk to them and try to get something
20 going. And like I said, Mr. Friedman was -- he told me
21 he was involved in school and it was tough for him to
22 come into the city.

23 Q What about his communication with you; were
24 there any times when you asked him to have communication
25 with you and what, if anything, did he do in reply to your

1 77 cmtg Giovanniello-direct
2 requests?

3 A I don't understand.

4 Q Did he --

5 A I would call him, sometimes I spoke to his
6 wife.

7 Q Did there come a time when you apprised
8 the Drug Enforcement Administration or any of the agents
9 of the level of cooperation you felt you had received
10 from Mr. Friedman?

11 A Yes.

12 THE COURT: When was that?

13 THE WITNESS: When I was ready to notify the
14 Brooklyn District Attorney's office as to his cooperation
15 relative to the two buys.

16 THE COURT: I don't know when that was.

17 THE WITNESS: In March, your Honor.

18 THE COURT: March of this year?

19 THE WITNESS: Yes.

20 THE COURT: I guess it was, he was only
21 arrested in September of last year. That was after he
22 was already indicted in this case; is that right?

23 THE WITNESS: I don't know when the indictment
24 occurred.

25 THE COURT: What would be the significance

1 78 cmtg Giovanniello-direct
2 of it if he made a report after?

3 MR. BUCHWALD: I don't think there would be
4 any.

5 BY MR. BUCHWALD:

6 Q Were you ever in communication with the
7 Drug Enforcement Administration as things went along as
8 to the status of Mr. Friedman's cooperation?

9 A Occasionally though, I would call Agent Smith
10 and apprise him as to Mr. Friedman's cooperation.

11 Q What evaluation of the cooperation did you
12 give and what was the basis for the evaluation which you
13 gave to the federal agents?

14 A Well, I stated to him that --

15 MR. BLOCK: Let's have a time fixed.

16 THE WITNESS: The time?

17 THE COURT: Yes.

18 THE WITNESS: I don't recall.

19 THE COURT: You don't recall at all?

20 THE WITNESS: Well sometime January or

21 February I would keep in touch with Agent Smith and I
22 would tell him.

23 THE COURT: Well let me ask you this: The
24 indictment which we are dealing with in this hearing was
25 January 8th is that correct? Seventy-six. Do you know

1 79 contg Giovanniello-direct

2 whether you made any evaluation of Mr. Friedman's efforts
3 between October 8th, 1975 and January, 1976?

4 THE WITNESS: I really could not, I could
5 not honestly say.

6 BY MR. BUCHWALD:

7 Q We have that testimony from the other side,
8 your Honor, from Mr. Smith as to times when he was in
9 communication --

10 THE COURT: So I am asking this witness
11 if he recalls.

12 MR. BUCHWALD: I understand.

13 Q Would you state to his Honor what evaluation
14 you made and what you told Mr. Smith on the basis of the
15 evaluation?

16 MR. BLOCK: Well, I object to it. It is
17 after the event.

18 THE COURT: It's not clear whether it is
19 or not because Agent Smith said he got some information.
20 What I would like to ask you next though before you
21 answer the question you were just asked, **did** anybody in
22 the Southern District of New York whether Agent Smith or
23 anyone else, any assistant here, ever get in touch with
24 you or were you advised that they got in touch with your
25 department to say they were considering indicting the

1 80 cmtg Giovanniello-direct

2 defendant and asking you whether he had or had not
3 cooperated with you?

4 A Well, the only communication we had with
5 anybody was, I believe, U.S. Attorney Flynn when he
6 originally was arrested in Jersey.

7 THE COURT: You mean in New Jersey. I am
8 talking about here in New York.

9 THE WITNESS: Other than Agent Smith telling
10 me that he was going to cooperate. In other words he
11 stated to me that Mr. Friedman would cooperate with us --

12 THE COURT: That was right at the very
13 beginning?

14 THE WITNESS: Yes.

15 THE COURT: Because that grew out of the
16 New Jersey arrest, right?

17 THE WITNESS: Yes.

18 THE COURT: Well you can tell us what you
19 told Smith, anyway.

20 THE WITNESS: As far as his cooperation?

21 THE COURT: Yes.

22 THE WITNESS: Well I stated that at various
23 times when I debriefed Mr. Friedman he gave me ten
24 individuals and at the end there were only three people
25 who I had made a case on.

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2 THE COURT: You told us that too. Did you
3 tell Mr. Smith any more or less than you told --

4 THE WITNESS: I said I had a problem bringing
5 him over from New Jersey, making meets, getting together.

6 THE COURT: In other words you told him
7 the problems that you have told us?

8 THE WITNESS: Right.

9 BY MR. BUCHWALD:

10 Q Did you say anything to Agent Smith as to
11 your evaluation of the calibre of Mr. Friedman's cooperation?

12 THE COURT: Well never mind what he told
13 Mr. Smith. Tell us.

14
15 Q Yes, tell us.

16 A I basically said he was unreliable as far
17 as an informant was concerned.

18 Q What was the basis for that? What we are
19 trying to do sir, you are probably in the best position
20 of anybody to evaluate the level of cooperation, we are
21 trying to find out what it was.

22 THE COURT: I don't know. It seems to be
23 up to me to evaluate that. The extent of the cooperation.

24 MR. BUCHWALD: I understand, your Honor, all
25 of it as a total proposition. I think we would argue to

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Giovanniello-direct-cross

2 your Honor that what was necessary if the defendants first
3 version of the promises is accepted, what was necessary
4 was a good faith determination by the prosecutor's office.

5 THE COURT: No, I don't think so. I might
6 make a good faith determination that would be wrong.

7 THE WITNESS: I had problems putting cases
8 together, I had problems getting in touch with the subject.

9 THE COURT: I understand. You indicated
10 what your problems were. Is there anything more than
11 that? There is no point in repeating all the things you
12 have told us. I take it that those are the reasons why
13 you considered Mr. Friedman unreliable.

14 THE WITNESS: That's correct.

15 MR. BUCHWALD: I have no further questions.

16 CROSS-EXAMINATION

17 BY MR. BLOCK:

18 Q Detective, my name is Block, and I am the
19 attorney for Mr. Friedman.

20 A Yes, sir.

21 Q Now, the cases that Mr. Friedman had made
22 for you involved Simon Danziger; that was one of them,
23 wasn't it?

24 A That's correct, sir.

25 Q Weren't there was another one called Paul Edelman?

- 1 83 cmtg Giovanniello-cross
2 A That's correct, sir.
3 Q And there was another one named Bradley
4 Cohen?
5 A That's right.
6 Q Now, those are the three cases in which he
7 was successful in introducing an undercover who made
8 buys and these people were arrested is that correct?
9 A That's correct.
10 Q And this took place between sometime in
11 October after he had been arrested in Brooklyn?
12 A That's correct.
13 Q And December of 1975; isn't that correct?
14 A That's right.
15 Q Now there was no -- no further cases were
16 made after December of '75; isn't that right?
17 A That's right.
18 Q Now, on the ten names that you said Mr.
19 Friedman gave you I would like to ask you if you recall this:
20 Among the names were there Elaine Needleman and Elaine
21 Vega?
22 A That's correct.
23 Q Those were the two girls you were talking
24 about before; is that correct?
25 A That's right.

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Giovanniello-cross

Q Is it correct that Mr. Friedman was told that the police didn't have the money to make the buys?

A There were times we had money problems.

THE COURT: Well, do you know if he was told that?

THE WITNESS: we had a problem? Yes. Can I elaborate on that, your Honor?

THE COURT: Well first answer whether he was told.

THE WITNESS: Yes.

Q He was told?

A Yes.

Q Well then wasn't it the money problem that prevented his efforts to make a case in connection with these women rather than any default on his part?

A Can I elaborate on that?

THE COURT: Yes.

Q Sure.

A At the time he called up and he said can you put, I forgot the amount of money, we have problems in the police department as far as our finances are concerned.

THE COURT: We all do.

Q You are not the only one.

A We cannot put a sum of money together in a short

1 85 cmtg

2 period of time. There are inspectors that we have to go to,
3 we have to submit papers.

4 THE COURT: I believe you.

5 A (continuing) And I said give us time. There
6 cannot be time he said. It has to be done right away. Then
7 there was a point in time where this Elaine Needleman and
8 Elaine Vega, we had the money and he said that he felt that
9 these people possibly knew that he got busted. So we never
10 got around to finalizing that deal.

11 Q All right. Now, did you regard that as lack
12 of cooperation on his part?

13 A Well, I felt that at a later date he could
14 have -- when we did have the money that he could have
15 continued on that case.

16 Q But you didn't find that what he told you
17 was untrue?

18 A No.

19 Q There was another person by the name, the
20 first name David, and he doesn't recall the last name.
21 Would you look at your list and see if he gave you the name
22 of somebody whose first name was David?

23 A David Levitt.

24 Q So, we are talking about the same person.

25 Now, did Mr. Friedman tell you that this fellow David Levitt

di Giovanniello-cross

1 86 cmtg
2 would not sell in the presence of anybody besides Mr.
3 Friedman? Do you recall him telling you that?

4 A No, sir.

5 Q Well let me ask you this: Did Mr. Friedman
6 say that he would like to go out and make a buy from
7 David Levitt just on his own?

8 A A direct? We would have more than let him
9 do it.

10 Q And, did you tell him that it couldn't be
11 done?

12 MR. BUCHWALD: There are some sounds coming
13 from back here. Maybe I ought to sit over here.

14 THE COURT: Excuse me, I didn't hear you.

15 MR. BUCHWALD: I just keep hearing comments
16 back here and I thought perhaps if I wasn't in the way
17 we could get them recorded.

18 THE COURT: I didn't notice any comments.
19 I noticed a lot of gestures. You know it doesn't do any
20 good to moan and groan, you have just got to sit and listen.
21 They have got a different story from you and you have got
22 a different story from them.

23 Q Anyway, you don't recall that in connection
24 with Mr. Levitt?

25 A There wouldn't be any problem of doing a direct

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2 sale.

3 THE COURT: Don't tell us whether there
4 would be a problem. Do you remember he asked.

5 THE WITNESS: No, I don't remember.

6 Q In other words, your position really is
7 that you don't know why Mr. Friedman wasn't able to
8 **arrange** for an undercover to meet Mr. Levitt; is that
9 what you are saying?

10 A That's correct.

11 Q Now, how about an Allen Bergman, was he a
12 name that was given to you?

13 A That's correct, Counselor.

14 Q And were you told that he wouldn't sell to
15 anybody except Mr. Friedman?

16 A That I don't recall.

17 Q Well what are you looking at? Do you have
18 notes on what happened?

19 A I have just little scratch notes on the
20 individuals that he had given me.

21 Q But you are testifying from recollection
22 as to what happened in the cases where there weren't buys?
23 This is your recollection?

24 A Right.

25 Q You don't have any notes about it?

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Giovanniello-cross

2 A No, I just have the names of the individuals
3 that he had given me on pieces of paper that is all.

4 Q Did he tell you that he knew people that would
5 sell marijuana?

6 A Marijuana, I believe so.

7 Q And did you tell him that you were only
8 interested in people who would sell pills and cocaine?

9 A It was a low priority at the time.

10 Q In other words you weren't interested in
11 marijuana, you were interested in pills and cocaine?

12 A That's correct.

13 Q And you told him that?

14 A That's correct.

15 Q But he offered to set up people who were
16 selling marijuana, right?

17 A There were some people but he didn't mention
18 any names.

19 Q But he did discuss the subject?

20 A That's right.

21 Q During this period from October through
22 December that we talked about when those three buys were
23 made by him, did you give any report at all to the federal
24 agents, to Smith or anybody else, about the fact that these
25 three buys were made prior to the first of January of 1976?

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2 A I had been in touch with Agent Smith but I
3 don't recall the exact dates that I --

4 Q I know, but I am asking you -- in other words,
5 let me try to refresh your recollection for a second. Here
6 you are. You have been told that this fellow is going to
7 cooperate with you.

8 A That's right.

9 Q It so happens that over a period of two
10 months you make three arrests as a result of his cooperation?

11 A I didn't make the arrests. We consummated
12 buys which the people stay out there, they weren't arrested.

13 THE COURT: All right.

14 Q But this is what you wanted him to do?

15 A That's correct.

16 Q To enable you to make buys; is that correct?

17 A That's correct, Counselor.

18 Q Do you have any recollection at all of calling
19 up Smith, let's say after the first one -- which was the
20 first one, Danziger?

21 A That's correct.

22 Q Did you call up Smith and say, "Well you gave
23 us a good man, we made a buy through Friedman?" You didn't
24 do that through Danziger?

25 A No.

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2 Q Did you do it with Edelman?

3 A I did it at some period of time. I don't
4 remember the exact day or the exact time, whether it was
5 before a certain period I really don't know.

6 Q Was the next one Edelman after Danziger, do
7 you remember?

8 A I really don't know. I will have to check.

9 THE COURT: Are you saying that at one point
10 you did tell Smith that you felt Friedman's cooperation
11 was proving satisfactory.

12 THE WITNESS: I just told him that he turned
13 over a case.

14 THE COURT: I see.

15 Q But actually you turned over three cases. So
16 does that help you remember when you spoke to Smith?
17 Did you tell him when the first case was made?

18 A I really -- we didn't talk in dates and times
19 as to when these cases went down.

20 Q Let me ask you this, Officer: Were you
21 present when Mr. Friedman --

22 MR. BLOCK: Withdrawn.

23 Q Was the assistant district attorney in charge
24 of the indictment in Brooklyn, was it Assistant District
25 Attorney, Taub?

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2 A That's correct, sir.

3 Q Were you present when Taub talked to Mr.
4 Friedman?

5 A I don't -- no. No. There were other
6 individuals, there were, I believe, seven or eight other
7 individuals who were arrested that night too. Mr. Taub
8 took everyone, one at a time.

9 THE COURT: That doesn't answer the question.

10 THE WITNESS: No, I wasn't there.

11 Q You weren't there during the interview by
12 Taub and Friedman?

13 A No.

14 Q Is that right?

15 A Not to my knowledge.

16 Q Do you have any information about Mr. Pollini,
17 Police Officer Pollini, calling up Mr. Friedman a day or
18 two after he had been arrested in the New Jersey case and
19 saying, "Are you ready to cooperate with us?"

20 A I don't know.

21 Q Did Pollini ever tell you he did that?

22 A Not to my knowledge.

23 MR. BLOCK: I think I have exhausted that
24 subject. I have nothing further.

25 THE COURT: If a man gave you three names and

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2 procured buys from all three of them, would you consider
3 that cooperation?

4 THE WITNESS: That's correct, your Honor.

5 THE COURT: But if he gives you more names
6 and you get three buys then it is not cooperation; is that
7 right? I don't want to be cute about it but you know you --
8 well I --

9 THE WITNESS: But, your Honor, I feel it is
10 my responsibility if a man gives me like "X" amount of
11 people to take these drug **traffickers off the street.**

12 THE COURT: Certainly. No doubt about
13 that.

14 THE WITNESS: And if a person cannot physically
15 do it at least he made a good faith attempt and I would
16 let the courts know it.

17 THE COURT: Well what do you think he
18 should have done that he didn't do?

19 THE WITNESS: Well the problem was, your Honor,
20 he would never make meets, he would never come across the
21 river. He said he was going to law school. I said, "Well
22 you don't do anything on a Wednesday night, let's get
23 together on a Wednesday night. What do you do during the
24 day? "He said, "Well, I study."

25 THE COURT: All right.

1 93 contg

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2 BY MR. BLOCK:

3 Q You didn't think he was required to devote
4 his full time to law enforcement. He is not being paid
5 as a police officer, is he?

6 A One day a week, a Wednesday night?

7 THE COURT: I think it is now up to me to
8 determine on an objective basis whether --

9 MR. BLOCK: Just one second, your Honor,
10 my client was telling me something.

11 MR. BUCHWALD: Your Honor, I would ask that
12 Mr. Flynn's affidavit be --

13 THE COURT: You haven't identified it.

14 MR. BUCHWALD: We had a copy of it marked for
15 identification. Why don't we use the original?

16 THE COURT: All right, would you mark that
17 for identification.

18 (Government's Exhibit 2 marked for identification)

19 THE COURT: I have already ruled that is not
20 admissible, but it is marked for identification. I think
21 we are now at the point where Mr. Block is going to
22 cross-examine Mr. Flynn.

23 T E R E N C E F L Y N N, having been previously
24 sworn, testified as follows:
25

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2 CROSS-EXAMINATION

3 BY MR. BLOCK:

4 Q Mr. Flynn, I guess you had quite a trip today,
5 I thank you for coming. I want to depart from what I had
6 been talking about when I last asked you some questions.
7 And I want to ask you about this: You talked to Agent
8 Smith before any of the prisoners; the Friedmans and Nach
9 were brought in, and Smith filled you in on the case; isn't
10 that correct?

11 A Right.

12 Q He gave you some details?

13 A That's right.

14 Q Then Friedman was called into your office
15 or brought into your office; is that right?

16 A Right.

17 Q And you warned him of his rights and had
18 some conversation and at some point Mr. Friedman told
19 you that he was a law student; isn't that right?

20 A That's right.

21 THE COURT: Told him what?

22 MR. BLOCK: That he was a law student. A
23 law school student.

24 THE WITNESS: Yes.

25 Q And did you raise your hand to your head, you

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2 know, and manifest a good deal of dismay?

3 A Something like that, yes.

4 Q Pardon?

5 A Something like that, I imagine.

6 Q Yes, because you really were astounded to
7 find that somebody who was involved in selling a quantity
8 of drugs was engaged in such a stupid enterprise and at the
9 same time going to law school. That was your thinking
10 generally; isn't that correct?

11 A That's correct.

12 Q Now, you then asked Friedman to step out of
13 the room; isn't that right?

14 A Yes.

15 Q And you had a conversation with Agent Smith?

16 A Right.

17 Q And was the conversation designed to see
18 how something could be done with respect to this young
19 fellow to preserve his ability to go on to a legal career,
20 assuming he finished law school and all that kind of thing?

21 Is that the subject that you and Smith
22 discussed?

23 A That was the subject. I don't know if we had
24 gone to the point of, you know, on into his legal career
25 or whatever. We thought --

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- 2 Q Well, you **were** very concerned, weren't you?
- 3 A Yes.
- 4 Q You didn't want to hurt this young man who
- 5 was a law school student anymore than you had to; isn't that
- 6 correct?
- 7 A Right.
- 8 Q Now, as a result of talking to Smith, did you
- 9 come up with any alternatives to prosecuting him?
- 10 A At that point?
- 11 Q Yes.
- 12 A We came up with an alternative to filing
- 13 the complaint at that point.
- 14 Q That was a way; is that right?
- 15 A Came up with an alternative to make a decision
- 16 at that point.
- 17 Q That was a way, of immediate prosecution.
- 18 In other words, the document that is in evidence in this
- 19 case, that was signed by Mr. Friedman and Mrs. Friedman?
- 20 A Right. That is true.
- 21 Q Is that what you arrived at with Smith in
- 22 the conversation?
- 23 A I don't think I spoke with Mr. Smith about a
- 24 need for a waiver at that point. I think what we talked
- 25 about was just general well maybe, you know, to find out

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2 whether or not we were going to have to arraign him
3 right away or whether we could get a waiver of the
4 arraignment.

5 THE COURT: Did you have in mind then or
6 have you since had in mind what could be done to, even
7 if he had given you all the cooperation in the world, and
8 I am not assuming that he didn't, that would give him
9 some assurance he might be able to continue to go to school
10 or be passed by the committee? I mean what could you have
11 done, I don't understand. I can understand your trying to
12 put the question off.

13 THE WITNESS: Quite frankly, your Honor, at
14 that time I didn't know exactly what could be done. I
15 am no more aware of the exact criteria for passing the
16 bar, I am sure the Court is more aware. But that basically
17 was -- to make a decision at that point I didn't know
18 what the effects would be one way or the other.

19 THE COURT: You didn't want to do anything
20 irretrievable.

21 THE WITNESS: At that point it could have
22 been irretrievable. If I was able to look at the rules,
23 it might not have been irretrievable. I don't know. But
24 at that time I thought it might be.

25 THE COURT: But I mean, have you since found

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2 any way that a law school student in this situation could
3 be protected, if that is the right word to use and I am not
4 suggesting the courts -- without simply dropping the
5 prosecution.

6 THE WITNESS: No, your Honor, quite frankly
7 I just haven't even looked into it.

8 THE COURT: Excuse me just a moment. All
9 right, Mr. Block.

10 Q Were you concerned in your conversation with
11 Mr. Smith of trying to figure out some way in which his law
12 career could be preserved?

13 A As I told the judge, I don't think we got to
14 the point of trying to preserve his entire law career or
15 whatever. I think at that point we were discussing, did
16 we have to do something right then.

17 Q In other words, you were focusing on the
18 arraignment?

19 A Right. We had to arraign him within a
20 reasonable time.

21 Q All right. Now let me ask you this: Had Flynn
22 told you --

23 A I am Flynn.

24 Q I'm sorry. Had Smith told you that Friedman had
25 been helpful in getting Jeffrey Nach to disclose his source?

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2 A I think he had. He may have. I remember
3 more clearly that his wife had been helpful.

4 Q Yes, well his wife actually made the phonecalls.
5 The recorded phonecalls?

6 A Right.

7 Q Were you told anything, I am trying to refresh
8 your recollection, by Mr. Smith that Friedman had been
9 present when Nach was questioned and urged Nach that it
10 would be in his best interest to disclose his source and
11 that Nach had disclosed his source who turned out to be a
12 fellow named Rud (phonetic)

13 Does that ring a bell, with you that you were
14 told that at that time?

15 A It doesn't ring a bell, that is all I can tell
16 you.

17 Q Did Smith tell you anything about Friedman
18 being involved having made two sales in Brooklyn of pills
19 in the summer of 1975?

20 THE COURT: Again, I don't understand what
21 difference it makes what Mr. Flynn knows about cooperation --

22 MR. BLOCK: No, this isn't cooperation. This
23 is now about the Brooklyn case against Friedman that is what
24 I am asking you about.

25 THE COURT: Well, what is the relevance of

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2 that and what is the relevance of Mr. Flynn's knowledge of
3 it?

4 MR. BLOCK: I am coming to it.

5 THE COURT: What is it? Can't you tell me?
6 Is it a secret?

7 MR. BLOCK: Well, I am asking him if Smith
8 had said anything to him about Friedman's involvement
9 in Brooklyn.

10 THE COURT: It is quicker to answer the
11 question.

12 A I don't recall him telling me something in
13 Brooklyn.

14 Q You don't recall it?

15 A No.

16 Q About any prior sales by Friedman in Brooklyn?

17 A I don't recall him saying anything about
18 anything in Brooklyn.

19 Q In any event, you called Friedman back into
20 the room; is that correct?

21 A That's right.

22 Q Did you say anything, Mr. Flynn, that could
23 have been interpreted by Mr. Friedman as indicating that
24 if he were to cooperate and make cases for the agents that
25 he would not be prosecuted for anything related to this New

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2 Jersey incident?

3 A No, I don't think so, in light of the
4 conversation and the going over it again and my explaining
5 it to him again that there was no way that I could
6 guarantee anything to him, I don't think he could have
7 left with that impression.

8 Q Now, there is testimony in this case that
9 Mr. Friedman actually went out and he helped the police,
10 Detective Giovanniello make three cases, or three buys,
11 rather, during the period from October, 1975, to December
12 1975. Now there is testimony in this case to that effect
13 by the detective.

14 And can you explain how it is that Mr.
15 Friedman on the basis of his conversation with you, where
16 he got no assurance that his law career would not be
17 **interfered** with, would nevertheless go out and knock himself
18 out, expose himself --

19 THE COURT: Mr. Block, I will sustain an
20 objection to that. It is not for Mr. Flynn to explain
21 that. I can explain it. But I mean that his explanation
22 is no more competent than mine or yours or anyone else's.

23 Q Well, let me ask you this: Did Mr. Smith
24 at any time while you were talking to Mr. Friedman tell
25 you that Mr. Friedman knew people who were involved in

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2 dealing in narcotics?

3 A He may have. It is probably likely that he did.

4 Q And, did Mr. Smith tell you that Friedman
5 might be willing to help to work with the agents and help
6 the agents to make buys from these people?

7 A Well, when you say "people," I don't know
8 if he -- like I say he may have --

9 Q I am talking about narcotics dealings.

10 MR. BUCHWALD: Can we have the answer once in
11 awhile completed before the next question?

12 A I don't think he was specific as to any
13 certain people. I think the **assertion** was based on the
14 amount that he had, that he knew other people that he
15 wouldn't be alone or isolated.

16 THE COURT: You didn't think he bought it
17 from the manufacturer?

18 THE WITNESS: Well, I don't know, Judge.

19 THE COURT: I say you didn't think that.

20 THE WITNESS: I don't even know if I even --

21 Q Were you interested in having Mr. Friedman
22 go out and work with the agents to detect dealers in
23 narcotics?

24 A Certainly.

25 THE COURT: I think we are treading on either

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territory that is so obviously unnecessary or territory that has been churned over a number of times. It is perfectly obvious to the prosecutor and every other prosecutor is doing everything possibly reasonable and normal to induce a defendant to cooperate. And the defendant later cooperated to some extent and wanted to cooperate and the question is whether -- whether an objective person would have considered that cooperation sufficient, but the first question of course is what was the assurance that was given to Mr. Friedman, and we have gone over that fifteen times.

MR. BLOCK: I want to ask a couple of specific questions then.

Q Did you say anything to Mr. Friedman in any way, shape or form that Mr. Friedman, you will be able to practice law, don't worry about your legal career?

A No.

Q Nothing like that?

A No.

Q Was there any discussion with Mr. Friedman about his ability to practice law?

A Yes.

Q What was said in that subject?

A He asked what would happen if he got -- he was

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2 uncertain if he got prosecuted what would happen to
3 his legal career. If he got deferred prosecution would
4 anybody ever find out about it. If he got -- you know
5 we went through -- asked me, I would say, all the way along
6 the line. He was concerned whether somebody would find
7 out about it. If somebody found out about it what would
8 happen. And to most of these I said, "I don't know. I
9 don't know what would happen." That is basically it.
10 He was concerned about all these options and he was
11 constantly going through them.

12 Q What options?

13 A Well, he was concerned as I said we talked
14 about deferred prosecution. We talked about possibly the
15 fact that he had no record, what he might get, probation or
16 whatever if he were charged. If he cooperated, what would
17 happen if he cooperated.

18 THE COURT: What did you say would happen
19 if he cooperated?

20 THE WITNESS: Well, Judge, he phrased that in
21 various different ways. What if he goes out and makes a
22 lot of cases. What if I just tell you a little bit. And
23 I said, "I don't know."

24 THE COURT: Did he suggest just telling you
25 a little bit?

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2 A Well if he just told us about it, but say
3 he didn't want to go out and work the -- he was afraid
4 that a little --

5 THE COURT: Just gave you leads?

6 THE WITNESS: Right, that he could say
7 something and that would be it, that the agent would ask
8 him to make introductions to other people. Would he
9 have to testify or something.

10 THE COURT: I know it is hard to answer these
11 questions in this kind of thing. What would you say was
12 the most reassuring statement that you made and were able
13 to make to him?

14 THE WITNESS: I told him that the facts of
15 his cooperation would be made known. We would evaluate
16 the facts and if he were charged, the full facts of his
17 cooperation would be made known to the Court.

18 THE COURT: Well, Mr. Block has pointed
19 out in questioning another witness that of course such
20 a statement is a routine statement.

21 THE WITNESS: That's right.

22 THE COURT: Was there anything about the
23 statement that you have just made, which you say you made
24 to Mr. Friedman on that day, other than the normal statement
25 that a prosecutor makes to a witness?

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2 THE WITNESS: No. The only thing unusual
3 about that whole interview was the fact that we had to go
4 over it again so many times with him. That he continued
5 to ask me over and over again. And I can characterize
6 it but it is not important. But just went over and over
7 and over again. He wanted assurances about the case one
8 way or the other. If he did so much would he be prosecuted.
9 Well how much would he have to do? And at that point I
10 couldn't say anything to him. I couldn't confirm anything.

11 THE COURT: All right.

12 BY MR. BLOCK:

13 Q And when his wife -- his wife then came into
14 the room?

15 A I think I spoke to his wife alone just
16 briefly and I think I more or less informed her about her
17 husband's situation.

18 Q What did you indicate you were going to do
19 as far as she was concerned? Was there any discussion
20 about taking her to a magistrate, charging her?

21 A Yes. I think one of the -- he was concerned
22 about his wife.

23 Q He was concerned about his wife?

24 A Certainly.

25 Q How did he manifest that concern?

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2 A I can't be specific with you, sir. I don't
3 know. I know he was concerned about his wife. That is
4 my general recollection.

5 Q So, you called his wife in alone?

6 A Right. She was also charged.

7 Q I beg pardon?

8 A She was also, you know, involved so I did
9 have to speak to her.

10 Q And, what did you do? Did you tell her that
11 she wasn't going to be prosecuted?

12 A I am sure I did.

13 Q You told her she was not going to be
14 prosecuted; is that what you are saying?

15 A No. No. I told her that, you know, gave
16 her the same options as far as going across the street,
17 that her husband had.

18 THE COURT: Subjecting yourself to
19 arraignment or waiving arraignment?

20 THE WITNESS: Right. She could go over with
21 her husband.

22 Q Was she concerned at all in talking to you
23 about what was going to happen to her husband?

24 A I think so.

25 Q Did she ask questions about in return for his

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2 cooperation what was going to happen to him?

3 A I don't think that she questioned me very
4 much, if at all.

5 Q Weren't they both in with you together for
6 a period of time then? Toward the end.

7 A Right, that is true.

8 Q And how long did all of this take, this
9 conversation, from the time you first started -- from the
10 time that Friedman came back into your office after you
11 learned that he was a law student until you finally got
12 rid of both Friedman's?

13 Would you say it was about an hour?

14 A It could be an hour. You know, I don't know.

15 Q You don't have a report such as they do in
16 the U.S. Attorney's office --

17 THE COURT: I am not really concerned if
18 it was an hour or six hours. That is slightly exaggerated
19 I suppose but the difference between an hour, hour and
20 a half or three-quarters of an hour is really of very
21 little probative value here.

22 Q Did Mr. Friedman call you up a couple of days
23 after this episode and tell you that he had received a call
24 from a New York City policeman and that he was confused,
25 he didn't know whether he was supposed to work with the New

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2 York City police or with the federal agents? Do you
3 recall a telephone conversation with him?

4 A That rings a bell. I can't recall specifically
5 but that sounds -- I know I did get a call from him.

6 Q And it was shortly after the interview
7 that you have been telling us about?

8 A I don't know whether it was shortly after
9 the interview or some weeks after that, sir. I don't know.

10 Q It could have been shortly after for all you
11 remember?

12 A For all I remember it could have been --

13 Q Do you remember the subject matter? You say
14 that does ring a bell that he was confused about whom
15 he was supposed to work with?

16 A Only that -- all I can say is it rings a bell.
17 I can't be sure of the subject matter. I can't narrow in
18 on it anymore than that, sir.

19 Q Did he ask for more assurances on the
20 telephone, in the telephone conversation?

21 A I think he did.

22 Q And did you --

23 A I can recall a conversation on the phone where
24 he again asked for assurances.

25 Q Did you ever say to him, "Trust me."

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Flynn-cross

2 A I don't recall whether or not I said trust
3 me, but I don't know in what circumstances you mean. I
4 wouldn't know --

5 Q No, no, in connection with your statements
6 as to what was likely to happen to him in the event he
7 cooperated with the agents and made cases. Did you ever
8 say to him in connection with questionns he asked as to
9 what was going to happen, trust me, don't worry, something
10 along those lines?

11 A I don't think so, no.

12 Q You could have but you don't remember?

13 A No, I don't -- in connection with what he
14 said to me I'd have to know what he said to me first.

15 Q Well what is going to happen to me, am I
16 going to be able to practice law?

17 A No, I don't think he ever brought up the
18 question of his practicing law again.

19 Q You mean he only mentioned it once?

20 A I think the only time we talked about his
21 practicing law was in my office.

22 Q And didn't he keep talking to you about whether
23 or not he could practice law?

24 A No, I don't recall him speaking to me about
25 practicing law again.

1 111 cmtg Flynn-cross

2 Q By the way, did you ever get a report from
3 the agents about the buys, about his actual cooperation?

4 A Agent Smith called me on a few occasions,
5 as a matter of fact I may have called him to just check
6 up on it to see whether or not there was any cooperation
7 or whatever, and at that time Agent Smith was complaining
8 to me about what he termed to be minimal cooperation,
9 reluctant reasons by --

10 Q When was that? Was that after the indictment
11 had been filed in the Southern District?

12 A No. No. It was before that.

13 Q Do you recall when the indictment was filed
14 in the Southern District?

15 A No.

16 Q I will tell you, it was in January of '76.

17 A No. It was definitely before that.

18 MR. BUCHWALD: As I recall there is a sealed
19 indictment that was initially filed in late November or
20 early December, I will double check the date but that fact
21 is probably favorable to them.

22 THE COURT: When it becomes known publicly --

23 MR. BUCHWALD: Publicly is January, right.

24 Q Did you have any conversation with Mr.

25 Bachelder at all about the indictment that was to be filed in

1 112 cmtg Flynn-cross

2 the Southern District?

3 A Oh, yes. Yes.

4 Q When was that? Prior to its being filed.

5 Sometime in November?

6 A Well, we had scattered conversations before
7 that because of the -- and the case was not specifically
8 on Mr. Friedman, I think that was secondary to the Rudd
9 and Bollei matter at that point.

10 Q So, you didn't talk about Friedman at all?

11 A Not at that point, no.

12 Q Let me ask you this: Bachelder talked to
13 you before he filed the indictment in New York; is that
14 correct?

15 A Right, I believe he did.

16 Q Now had Smith told you prior to the time
17 that you talked to Bachelder that the defendant's cooperation
18 was minimal? Can you place the time? Can you place
19 whether it was before or after you talked to Bachelder?

20 A Oh, it was before. I think it was before.

21 Q Before you talked to Bachelder. So it would
22 have been sometime in October or November that Smith told
23 you the defendant's cooperation was minimal?

24 A Right.

25 Q Tell me this, on direct examination didn't you

1 113 cmtg Flynn-cross
2 say something about attempting to call the district
3 attorney in Brooklyn while Friedman was in your office?

4 A I said that I think I couldn't recall one
5 way or the other whether or not I had made any type of
6 call to the district attorney.

7 Q Well, does that help you remember that if
8 you did attempt to call the district attorney in Brooklyn
9 it would be because Friedman had told you that he was
10 involved in something in Brooklyn?

11 A Right. And at that point, you know, upon
12 reflection I couldn't have called him at that point
13 because I didn't know.

14 THE COURT: Didn't know what?

15 THE WITNESS: Didn't know about any charges,
16 about anything in the -- in Brooklyn at that point.

17 Q Well, at what point -- did you ever have
18 occasion to speak to the district attorney in Brooklyn?
19 When I say district attorney I mean District Attorney --
20 Assistant District Attorney Taub, does that name ring a
21 bell?

22 A Doesn't ring a bell, the name, sir.

23 Q What made you think you attempted to communicate
24 with the district attorney in Brooklyn in connection with
25 the case of Friedman?

1 114 cmtg

Flynn-cross

2 A I remember speaking with a detective in
3 Brooklyn. I don't know whether or not I spoke to a
4 district attorney.

5 Q Was that about Friedman?

6 A I think it was about Friedman and whether
7 or not Friedman was cooperating or not.

8 Q Did you call him or did he call you?

9 A I don't recall, sir.

10 Q Do you remember the name of the detective?

11 A No, sir.

12 Q Was it Giovannello?

13 A It could have been.

14 Q And, can you place it, timewise?

15 A No, sir, I can't.

16 Q Tell me this: Did it occur at all in your
17 conversation with Mr. Friedman that you said to Mr.
18 Friedman, look, sit down and write out the understanding
19 that we have reached about your cooperation, and so forth,
20 and give him some paper on which to write and he was
21 starting to write?

22 A No, sir, because there was no understanding
23 at that point.

24 Q Let me see if I can remind you that you told
25 this to Friedman because your secretary was out, or un-

1 115 cmtg

Flynn-cross

2 available at the time and you said, write something out.

3 THE COURT: And then she returned.

4 Q (continuing) And then she returned at
5 which point she brought into you these forms of waiver of
6 an arraignment. Does that recall anything to you?

7 A No. It could have happened that way, I don't
8 know. It doesn't refresh my --

9 Q Do you keep these forms of waiver right in
10 your desk?

11 A No.

12 Q Your secretary would have to bring it in.
13 Did you have a secretary?

14 A Yes, I do, sir.

15 Q Do you recall that you called your secretary
16 and asked her to bring this in?

17 A No, I don't recall.

18 Q Did you explain to the Friedmans in connection
19 with these waiver forms, waiver of arraignment, that this
20 embodied the agreement that Friedman himself would not be
21 prosecuted?

22 A No.

23 Q Never said that?

24 A No, sir.

25 Q And you would have no hesitation in telling us

1 116 cmtg Flynn-cross

2 if you actually had.

3 A That's correct.

4 Q Do you recall that you told Friedman that
5 you would try to have the Brooklyn thing taken care of
6 so that it wouldn't be pressed and that you would see that
7 there would be no prosecution in the Newark thing? You
8 know, in the New Jersey matter?

9 A No. No I couldn't guarantee him immunity
10 in a case in the borough of Brooklyn if I wanted to.

11 Q I want to make it plain -- I have just
12 a couple more questions, your Honor -- it is not a question
13 of granting formal immunity. We are not talking about
14 that. What we are talking about sir, and I would like to
15 make it very clear, is was this a situation where you said
16 something out of sympathy for this young fellow who was
17 going to law school that would have led him to believe
18 that nothing would happen, no prosecution would grow out
19 of his involvement with drugs which would undoubtedly
20 destroy his chances of ever being able to practice law.

21 THE COURT: I will allow that question this
22 time but this question has been asked fifty times of Mr.
23 Flynn and a number of others. It has been asked but I
24 will allow it to be answered and that is it.

25 A No. Particularly because he was in law school

1 117 cmtg Flynn-cross-redirect
2 and particularly because he went over and over again
3 questioning me about what was happening that I made it
4 very clear to him that what he was -- what was happening
5 was we were postponing his arraignment. We were going to
6 evaluate his case. But I took particular pains to make
7 sure that he understood it. He took particular pains to
8 make it more clear for his own benefit in an effort to
9 make it something like immunity. And we took pains to
10 dissuade him of that idea.

11 Q What further evaluation were you going to
12 give to his case?

13 THE COURT: I'm sorry, as important as
14 this is, the cross-examination is concluded.

15 MR. BLOCK: All right, your Honor.

16 THE COURT: Anything further?

17 MR. BUCHWALD: Yes, your Honor, two or three
18 brief questions.

19 REDIRECT EXAMINATION BY

20 MR. BUCHWALD:

21 Q The form that was in fact here signed by Mr.
22 and Mrs. Friedman each one witnessing the other's; is that
23 a normal form that you have in your office?

24 A No, we don't have a normal form.

25 Q Is that one that you prepared at the time?

1 118 cmtg Flynn-redirect

2 A At that time?

3 Q Do you recall whether you ever got a call or
4 made a call concerning whether or not the New York City
5 Police Department should report to its internal affairs
6 division who would in turn report to the New York City
7 Board of Education the fact of Mr. Friedman's arrest?
8 Was there any conversation along those lines that you
9 recall?

10 A I don't remember. No. No, sir.

11 Q Was the waiver of arraignment form and
12 discussion with Mr. Friedman in any way a ruse on your
13 part to maximize the pressure on him to cooperate?

14 A No, sir. He had enough pressure as it was
15 with the charges against him.

16 Q In fact you also were desirous were you not
17 in your law enforcement capacity of having Mr. Friedman
18 cooperate?

19 A That's correct.

20 Q He was arraigned at that point?

21 A He was arraigned.

22 Q And, am I correct that but for the fact that
23 Mr. Friedman mentioned to you at the end of the conversation
24 that he was a law student and what followed, he would have
25 been arraigned that morning?

1 119 cmtg Flynn-redirect

2 A That's correct.

3 Q Knowing what you now know about his
4 involvement in the case and whatever seriousness you
5 attached to the offense and his background and other
6 involvement with the law, the cooperation which he
7 rendered had this case stayed in the district of New
8 Jersey, had the conspiracy aspects of it been primarily
9 in New Jersey, what, if any recommendation would you have
10 ultimately made as to whether or not Mr. Friedman should
11 have been included in the New Jersey conspiracy indictment.

12 THE COURT: Overruled. It is too
13 hypothetical.

14 Q Did you ever attempt to dissuade Mr. BACHelder
15 from including Mr. Friedman in the indictment in the
16 Southern District of New York?

17 A No.

18 Q Were you aware prior to the indictment that
19 Mr. Friedman was going to be indicted in New York?

20 A Yes, I was.

21 Q Did you indicate, did you ever indicate
22 to Mr. Friedman during the course of your discussions with
23 him on September 25, following his disclosure that he was
24 a law student that the only factor which was to be
25 considered by you in the future would be his cooperation?

1 120 cmtg Flynn-redirect

2 A No.

3 MR. BUCHWALD: I have no further questions.

4 THE COURT: Thank you very much, Mr. Flynn.

5 THE WITNESS: Thank you, your Honor.

6 (Witness excused)

7 THE COURT: I would like to indicate for
8 the record if it isn't already a part of the record that
9 the hearing in this case has taken one full day and a half
10 and it is now 5:15 in the afternoon.

11 Gentlemen, do you want to do anything further
12 in this case or do you just want to leave it to me to
13 decide?

14 MR. BUCHWALD: Your Honor, we would --

15 THE COURT: I am not inviting memoranda.
16 If there are any memoranda you want to submit I will be
17 glad to receive them provided they are no more than five
18 pages.

19 MR. BLOCK: Well, I think -- you are talking
20 about a memorandum of law.

21 THE COURT: No, this isn't a legal question.
22 There are two factual questions here; was a promise made
23 on conditions as you claim, and if the promise was made were
24 the conditions met? And then you have a second claim in which
25 you say that leads were taken, I assume -- I don't know

1 121 cmtg Flynn-redirect
2 whether that is supposed to be a Miranda claim or what
3 it is, but I am just talking about what the facts add up
4 to here.

5 MR. BLOCK: Well, your Honor, the only
6 thing that I think might be helpful to the Court would be
7 if we got the transcript and we briefed it for your Honor.
8 But if your Honor has careful notes --

9 THE COURT: I have fifty pages of notes.
10 But you can brief it without getting the transcript. You
11 must know what was said here.

12 MR. BLOCK: I don't have fifty pages of
13 notes, no. There were conflicts in the testimony and that
14 sort of thing.

15 THE COURT: Well, as you are appointed
16 counsel I guess you are entitled to a copy of the transcript
17 if you want to do that. But you can brief it within
18 five pages. I am just not going to turn this motion into
19 a magnum opus,, which it already is.

20 MR. BLOCK: Well, your Honor, if we could
21 have the transcript I would like to be able to look at
22 it, and I would try my best to keep the statement making
23 my points in the five pages that you talked about.

24 THE COURT: Just point out whatever con-
25 flicts you think there are. I suppose obviously if Mr. and

1 122 cmtg

Flynn-redirect

2 Mrs. Friedman are to be believed, the motion probably ought
3 to be granted. And if they are not to be believed then it
4 would be denied. And of course there is a -- talking
5 about beliefs and so on, doesn't necessarily mean that
6 anybody has lied on the stand because I don't believe
7 necessarily anyone has lied on the stand in spite of the
8 obvious differences of recollection. How long will it
9 take to get the transcript here for a C.J.A. matter?

10 (Off the record).

11 (Discussion off the record)

12 THE COURT: All right, ten days after
13 receipt of the transcript?

14 MR. BLOCK: I will have something for you,
15 yes, sir.

16 THE COURT: If you want to put anything in
17 you can. You will file memoranda within ten days after
18 receipt of the transcript.

19 MR. BUCHWALD: Your Honor, we have just to
20 preserve our record, we would ask an opportunity
21 to be given to Mr. Flannery to testify if your Honor
22 feels that his testimony is at all necessary.

23 THE COURT: I don't believe it is at all
24 necessary. I can't believe that another witness would
25 make the slightest bit of difference.

1 123 cmtg

2 Are there any questions that
3 either of you have, Mr. or Mrs. Friedman?

4 MR. FRIEDMAN: No, your Honor.

5 THE COURT: Mrs. Friedman?

6 MRS. FRIEDMAN: No, your Honor.

7 MR. FRIEDMAN: Thank you, your Honor, for
8 your patience.

9 (Court adjourned, 5:25 p.m.)

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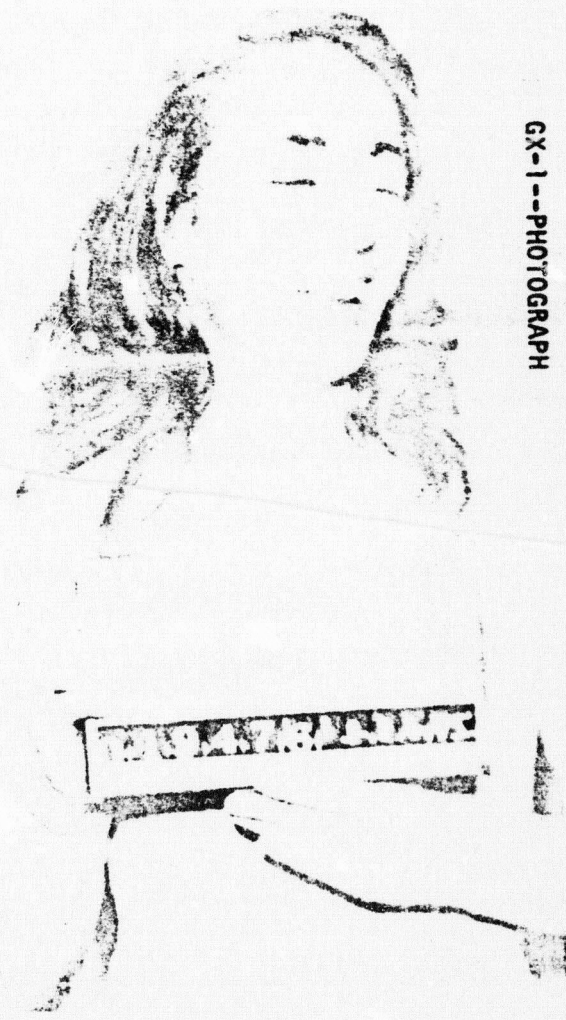
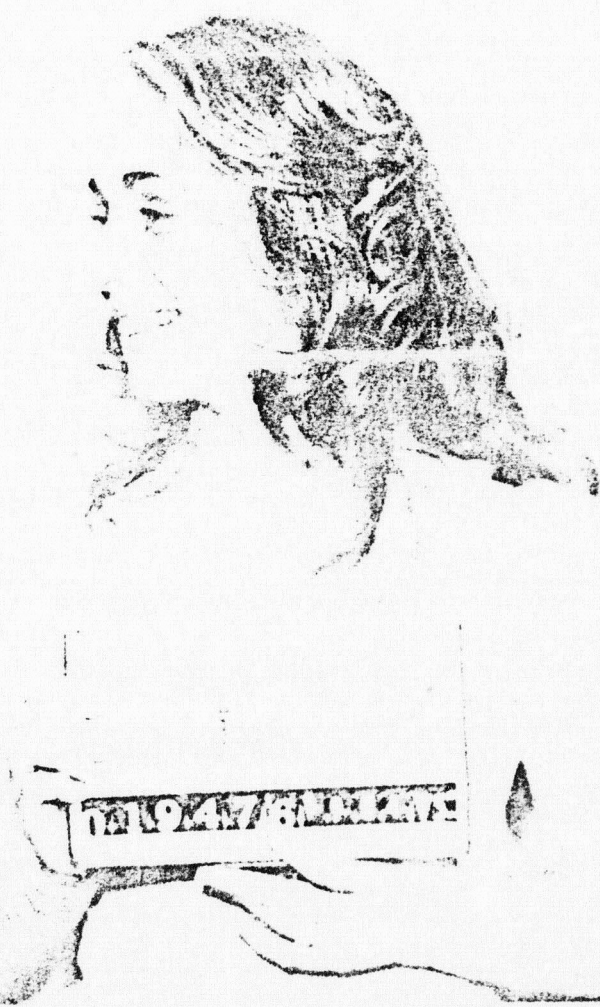
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TRANSCRIPT OF 11/29/76--DECISION ON MOTION TO DISMISS

1 bs ja l

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - - x

5 UNITED STATES OF AMERICA :

6 v. : 75 Cr 1098 MFL

7 LAWRENCE FRIEDMAN, :

8 Defendant. :

9 - - - - - x

10 November 29, 1976
11 10:00 a.m.

12
13 Before:

14 HON. MORRIS E. LASKER,
15 District Judge

16
17 Appearances:

18 ROBERT B. FISKE, JR., ESQ.
19 United States Attorney for
the Southern District of New York

20 BY: DON BUCHWALD, ESQ., AUSA

21
22 FREDERICK H. BLOCK, ESQ.
23 Attorney for defendant

24
25

bs ja 2

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1
2 THE CLERK: Government ready?

3 MR. BUCHWALD: Ready for the Government.

4 THE CLERK: Defendant ready?

5 MR. BLOCK: Ready.

6 Before your Honor renders his decision on
7 this matter, I would like the record to show that
8 the Government is not putting any papers in opposition
9 to my memorandum.

10 THE COURT: That is correct. I don't take
11 that to mean they necessarily acquiesce in your view
12 of the matter. They have already argued the position
13 in the past, and in any event, whether they acquiesce
14 or not, I have to make a decision.

15 MR. BLOCH: I just wanted the record to show
16 that.

17 In the second place, your Honor, I went
18 along with your Honor's order to submit a very short
19 brief, but on second thought, where I alluded to
20 a misunderstanding, I wanted your Honor to be aware
21 that that was pretty much of a euphemism for what I
22 regard as a convenient memory on the part of the Federal
23 people involved.

24 THE COURT: I thank you, Mr. Block.

25 Before I render my decision, I want to

1 bs ja 3
2 make it clear that these are two motions to dismiss
3 the indictment, first on the grounds that it is barred
4 by the Government's promise of non-prosecution in
5 exchange for cooperation; secondly, because it grew out
6 of leads obtained from the defendant himself in alleged
7 violation of his constitutional right to remain silent
8 while in custody.

9 I regarded the claims here sufficient to
10 require an evidentiary hearing, which was held on
11 September 23rd and September 27, 1976, resulting in
12 nearly 400 pages of transcript, at which various members
13 of the law enforcement authorities and the United States
14 Attorney -- Assistant United States Attorney for the
15 District of New Jersey testified for the Government, and
16 the defendant and his wife testified for the defendant.

17 I have reviewed the transcript in detail
18 as well as requesting my law clerk to do so, and discussed
19 it with my law clerk to be sure of the findings which we
20 make as a result of that careful examination.

21 I have, of course, referred to those portions
22 of the transcript specified in the defendant's post-
23 hearing memoranda and to the case or cases to which the
24 defendant refers.

25 I conclude the defendant's motions must be

bs ja 4

4

1 denied, although I must say that I believe that the
2 Government's behavior with regard to the examination
3 of Mrs. Friedman, in particular, and Mr. Friedman much
4 less so, was by no means the most admirable.
5

6 Nevertheless, I do not find either that
7 Mrs. Friedman's will was overborne or that Mr. Friedman's
8 will was overborne by that questioning.

9 Let me go first, however, with regard to the
10 question of whether the indictment should be dismissed
11 on grounds that it was barred by Government promise
12 of non-prosecution in exchange for cooperation.

13 I find that that was not so.

14 Although Mr. Friedman may have gone far
15 towards persuading himself that the Assistant United
16 States Attorney, Mr. Flynn, had committed himself to
17 keeping Mr. Friedman from prosecution if Friedman helped
18 investigate other narcotics dealers, I find it is clear
19 that the testimony of Mrs. Friedman and of Mr. Flynn, and
20 of the Federal agents at Flynn's interview with the
21 Friedman's, that Mr. Flynn repeatedly said he could make
22 no guarantees about anything is to be credited. That
23 will be found at transcript pages 44, 47, 49 and 107.

24 Mr. Flynn, in my view and finding, made clear
25 to Mr. Friedman that the agreement was that Mr. Friedman

1 bs ja 5

2 would not be immediately prosecuted, both so that the
3 Government would have time to consider its case against
4 Mr. Friedman and a just method of disposition of it, and
5 so that Mr. Friedman's career would not be unnecessarily
6 prejudiced, and this was to take place in exchange for
7 Mr. Friedman's agreement to cooperate with ongoing
8 drug investigations.

9 The waiver form which Mr. and Mrs. Friedman
10 each signed is simple and clear in its terms, and the
11 Court does not believe that a person of Mr. Friedman's
12 age and educational background did not understand the
13 plain language of the statement that he signed the
14 morning after his arrest.

15 I find no further promise to have been made
16 by Mr. Flynn. To the contrary, a constant iteration to
17 the fact that he couldnot guarantee what the outcome
18 of the proceedings would be.

19 I may say that the conclusion that the
20 Government did not at any time promise not to prosecute
21 Mr. Friedman on the absolute basis which he contends for
22 any offense rising out of the narcotics sale that he
23 attempted is supported by the fact that Mr. Friedman
24 himself was extremely dilatory in asserting to this or
25 any other court that the subsequent indictments were

bs ja 6

6

1
2 barred by Mr. Flynn's promise.

3 While I find that his behavior in that respect,
4 however, supports the conclusion that I reached, my-
5 conclusion is not based on the dilatory action of
6 Mr. Friedman in taking the position that he now takes but
7 in my crediting the testimony of Mr. Flynn, who impressed
8 me as a very straightforward and sympathetic witness,
9 sympathetic to the defendant himself.

10 In short, I credit the testimony of Mr. Flynn,
11 and accordingly find that the Government made no promise
12 which it broke.

13 The motion to dismiss based on the claim of
14 broken Government promise is, therefore, dismissed

15 The case may be somewhat closer with regard
16 to the second leg of the motion, that is, that the indict-
17 ment should be dismissed because it grew out of leads
18 obtained from violation of Mr. Friedman's right to
19 remain silent while in custody.

20 Although I must say that even if I agreed
21 entirely with Mr. Friedman that there had been a
22 violation of his constitutional rights, which I do not,
23 I would still not dismiss the indictment but merely
24 suppress any statement made by Mr. Friedman while in
25 custody or any material which the Government discovered

1 bs ja 7

2 as a result of Mr. Friedman's statement.

3 But although the Government has the burden
4 of proving the voluntariness of Mr. Friedman's statements
5 by a preponderance of the evidence, I find that it
6 has met this burden here.

7 There is no dispute that when Friedman was
8 first arrested in New Jersey he asserted that he did not
9 want to talk and wanted to see his attorney.

10 I credit the testimony, however, of Agent
11 Hall that when Friedman stated that he didn't want to
12 talk, all discussion was, for the time being at least,
13 terminated for a period of close to one and one and a half
14 hours in a waiting car in Clifton, New Jersey, on the
15 way to the DEA Headquarters, Friedman had effectively cut
16 off questioning.

17 Moreover, on the ride to DEA Headquarters, I
18 find that despite Mr. Friedman's assertions of his desire
19 to remain silent, he attempted to question the agents
20 as to the circumstances and reasons for his arrest and
21 that of his wife.

22 On arrival at DEA Headquarters, Friedman was
23 again given Miranda warnings and was again asked whether
24 he wished to make any statement.

25 At this time, however, he didn't state

1 bs ja 8

2 absolutely that he wished to remain silent or that he
3 wished to consult an attorney.

4 I must discount Friedman's response to a
5 leading question by his attorney to the effect that he
6 also mentioned that he wanted to see a lawyer, which
7 is at transcript page 74.

8 Rather, I credit Mrs. Friedman's testimony
9 that her husband was shouting to her to keep quiet until
10 they could talk together, and that "Maybe we should
11 consult an attorney."

12 This statement does not have the ring -- nor
13 should it be regarded, coming from Mr. Friedman, as a
14 request for counsel. Rather, it is indicative that the
15 defendant was in the process of weighing the pros and
16 cons of asserting his constitutional right to counsel
17 before participating in any further interrogations.

18 In this regard, the case of United States
19 against Collins, 462 Fed. 2d, 792, 2d Circuit, is
20 relevant.

21 I find that it was Mr. Friedman's conversation
22 with his wife and his discovery in that conversation
23 that she had decided to cooperate, and I think decided
24 for very sound reasons, which persuaded him that he
25 should also cooperate with the police in this case, and

1 bs -ja 9

2 I agree with him, and I agree with her, that what they
3 did was sound and mature and acting as good citizens.

4 Under the circumstances, however, I do not
5 find, and I do not believe it to be the case, that
6 either Mr. or Mrs. Friedman's will were overborne.
7 They were both mature, knowing citizens. He had entered
8 law school. They had a brush with the law before.
9 They knew entirely what they were doing.

10 There is no basis for dismissing the indict-
11 ment on the claim that Mr. Friedman's right to remain
12 silent while in custody were violated.

13 The motion based on this ground is also
14 denied, and I believe that that disposes of the issues
15 before the Court.

16 I regret that these conclusions are distressing
17 to Mr. and Mrs. Friedman, but as the French say, and
18 without being insensitive to their position, "C'est
19 la vie."

20 MR. BLOCK: Could I say something off the
21 record for a minute?

22 THE COURT: No, say it on the record.

23 MR. BLOCK: Your Honor, I think that
24 your Honor possibly overlooked -- this doesn't go to
25 the merits -- but overlooked the fact that the only

1 bs ja 10

2 charge against Mr. Friedman is on the conspiracy count
3 of the indictment.

4 There is no substantive charge, and that is
5 why I suggested that the indictment should be dismissed,
6 if you found that all the leads came from him, which they
7 did.

8 THE COURT: But I don't find that they all
9 came from him at all.

10 MR. BLOCK: But assuming that they had,
11 then it would seem to me to be proper to dismiss the
12 indictment.

13 I think the way --

14 THE COURT: Perhaps if I had. But once I
15 learned the facts and found that Mrs. Friedman had
16 already, for example, given information about --

17 MR. BLOCK: I am not arguing your decision,
18 Judge. I am just saying this, that you had a statement
19 somewhere in there that was to the effect that the
20 indictment couldnot have been dismissed even if you
21 had found --

22 THE COURT: I said that on this record, as
23 it has developed, even if I had agreed with the contention
24 of Mr. Friedman that he had been deprived of his
25 constitutional right to remain silent in custody, I never-

1 bs ja ll

2 theless would not have dismissed the indictment because
3 the Government would have sufficient information to
4 proceed without that material.

5 I would have suppressed the statements of
6 Mr. Friedman and anything that flowed from that.

7 MR. BLOCK: Now, if your Honor please, I
8 would like to ask for an opportunity, now that your
9 Honor has rendered a decision, as to the course to take
10 on behalf of my client. As your Honor knows --

11 THE COURT: We have some problems, Mr.
12 Block. I think you and Mr. -- I don't know whether it
13 is Mr. Batchelder still, or whether it is you now,
14 Mr. Buchwald, but whoever is handling the case, I
15 think both counsel better get together and determine
16 what the application of the Speedy Trial Act is in this
17 situation.

18 If it is to go to trial, you should do that,
19 because it is a pre-July 1st, is it, or July 30th --

20 MR. BUCHWALD: July 1st.

21 THE COURT: July 1st case, which ordinarily
22 would have to be tried by the 1st of January with a 30-
23 day addition for such time as has been taken in connection
24 with this motion, which will bring it to around the 1st
25 of February, and I have a very heavy trial calendar between

1 bs ja 12

2 now and then, which involves several criminal cases.
3 So we have to know what to do about this, and we can't
4 take long periods of time to decide, Mr. Block.

5 MR. BLOCK: I wasn't suggesting that, if
6 your Honor please. I was suggesting a week's time
7 on this theory that I would like --

8 THE COURT: I really think the thing for
9 me to do is to set a date for trial on the case and
10 whatever you want to do now between the date for
11 trial and now, you can do.

12 MR. BLOCK: I can take an appeal.
13 Frankly, at the moment, I don't know what effect that
14 would have on the proceedings before your Honor.
15 I think that since an appeal does lie from an adverse
16 decision of this kind, that that probably stays every-
17 thing.

18 THE COURT: Probably so.

19 MR. BLOCK: But, on the other hand, I think
20 your Honor's suggestion is correct, if your Honor would
21 set a trial date, and by that time we will know where
22 we are going.

23 THE COURT: How long do you think the trial
24 of this case will take?

25 MR. BUCHWALD: It is my understanding, your

1 bs ja 13

2 Honor, that it will probably take in the area of two
3 to three days.

4 Mr. Batchelder has indicated that he would
5 be most anxious, if the case proceed to trial, to try
6 the case, and he would be in a better position, I think,
7 he is familiar with all the facts of the case.

8 THE COURT: I will set a trial date, probably
9 the first week or beginning of the second week of January,
10 as I see it now. I'm not sure. Somewhere between the
11 20th of December and the 10th of January, anyway.

12 I will let you know precisely when it will
13 be. I will address the letter to Mr. Block, Mr. Buchwald
14 and Mr. Batchelder so there can be no question that every-
15 body is fully informed.

16 MR. BLOCK: I would like to say in all
17 fairness and candor that if it should be decided that
18 Mr. Friedman is going to enter a plea of guilty, I would
19 of course advise your Honor and counsel as soon as
20 possible.

21 THE COURT: I appreciate that. I really
22 have so many obligations.

23 MR. BLOCK: That is a possibility, of course.

24 -----

25

NOTICE OF MOTION DATED 12/30/76 TO DISMISS INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

vs.

Ind. No. 75 Cr. 1098
(MFL)

LAWRENCE FRIEDMAN,

NOTICE OF MOTION

Defendant.

-----x

S I R :

PLEASE TAKE NOTICE that on the indictment herein and on the annexed affidavit of Frederick H. Block duly sworn to the 30th day of December, 1976 and upon all the papers and proceedings heretofore had herein, the undersigned will move before the Hon. Morris E. Lasker, United States District Judge at his chambers, Room 1904, United States Courthouse, Foley Square, New York, N.Y. on January 10, 1977 at 5:00 o'clock in the afternoon of that day for an order dismissing the indictment herein upon the ground:

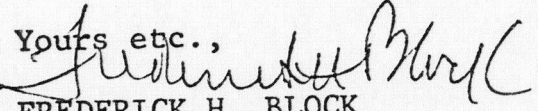
(1) that the statutory scheme embodied in 21 USC section 811 on its face and as applied in the case of methalaguone constitutes an unconstitutional delegation of power and on the ground:

A 482

(2) that no fair warning as to the inclusion of methalaguone in Schedule II was given, ^a and granting such other, further and different relief as to the Court may seem just and proper in the premises.

Dated: December 30, 1976.

Yours etc.,


FREDERICK H. BLOCK
Attorney for Defendant
919 3rd Avenue
New York, N.Y. 10022

TO: UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
1 St. Andrews Plaza
New York, N.Y. 10007

Attn: Assistant United States Attorney
Don Buchwald

AFFIDAVIT OF FREDERICK H. BLOCK IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

Ind. No. 75 Cr. 1098
(MFL)

vs.

LAWRENCE FRIEDMAN,

AFFIDAVIT

Defendant.

-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

FREDERICK H. BLOCK being duly sworn, deposes and
says:

I am the court-appointed attorney for the above
named defendant. He has been charged in the first count
of the indictment herein with having conspired with others
to distribute and possess with intent to distribute a
Schedule II substance, to wit, quaaludes (methalaguone) in
violation of 21 USC section 841.

The instant motion seeks dismissal of the charge
against my client on two grounds. The first ground is
that the statutory scheme embodies in 21 USC §811 which
authorizes the Attorney General of the United States to add
drugs to the schedule set forth in 21 USC §812, constitutes

an unlawful delegation of power facially and as applied. In urging that the statute is facially unconstitutional, reliance is placed on the contentions made by the appellant Pastor in the case of United States vs. Pastor and Weiner which bears Docket No. 76-1364 in the Second Circuit Court of Appeals. That case is set for argument on January 13th next. It is contended that as applied in the case at bar, the statute is unconstitutional in that the Attorney General pursuant to 28 CFR 0.100 delegated his authority to the Director of the Drug Enforcement Administration. As set forth in 38 Federal Register page 27517 (issue of October 4, 1973), the Acting Administrator of the DEA actually exercised the authority and ordered that methalaquone be classified in Schedule II.

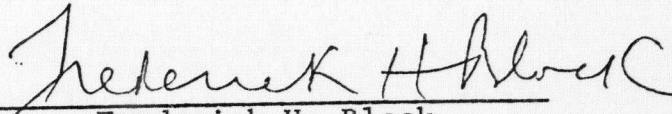
The second ground urged for dismissal is based on the contention that no fair warning has been given with respect to the aforesaid classification of methalaquone. The only place where its classification appears is in the above cited issue of the Federal Register.

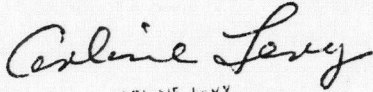
For the convenience of the Court, a copy of the

pertinent Federal Register pages is submitted herewith.

WHEREFORE, deponent respectfully prays for the
granting of the within motion in all respects.

Sworn to before me this
30th day of December, 1976.


Frederick H. Block



ARLENE LEVY
Notary Public, State of New York
No. 41-4515051
Qualified in Queens County
Commission Expires March 30, 1977

A 496-409

EXTRACT FROM FEDERAL REGISTER OF 10/4/73 ANNEXED TO
MOTION PAPERS

federal register

Area Code 202

Phone 523-5240

THURSDAY, OCTOBER 4, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 192

Pages 27501-27574



METHAQUALONE—Justice Department classifies as
Schedule II controlled substance; effective 10-4-73..... 27516

EXTRACT FROM FEDERAL REGISTER OF 10/4/73 ANNEXED TO
MOTION PAPERS

Title 21—Food and Drugs

CHAPTER II—DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

Methaqualone and Its Salts

A notice dated April 6, 1973, and published in the Federal Register on April 11, 1973 (38 FR 9170), as amended on April 17, 1973, and published on April 23, 1973 (38 FR 10010), proposed placement of methaqualone and its salts in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-613). All interested persons were given thirty days after publication to submit their objections, comments, or requests for hearing.

On May 14, 1973, Covington and Burling, Counsel for William H. Rorer, Inc. (Rorer), a principal manufacturer and distributor of methaqualone under the trade name Quaalude, requested a hearing concerning the proposed placement of the drug methaqualone in Schedule II.

Subsequent to Rorer's request for a hearing, prehearing conferences were held on June 15 and June 29, 1973. The evidentiary hearings were held on July 17 and 18 and August 1 and 2, 1973. The record was closed on the last day of hearings and proposed findings and replies were filed by the parties on August 31 and September 14, 1973.

As a result of these hearings, Administrative Law Judge Theodore P. von Brand, submitted the following Recommended Decision which has been reviewed and adopted without modification by the Acting Administrator, Drug Enforcement Administration.

Before the United States Department of Justice, Drug Enforcement Administration
In the matter of scheduling of Methaqualone and its salts (Docket No. 73-11)

RECOMMENDED DECISION

Theodore P. von Brand, Administrative Law Judge; Robert J. Boethel, Esq., Harold D. Murry, Jr., Esq., and Richard Ona Labovitz, Esq., Counsel for the Drug Enforcement Administration; Covington and Burling, Washington, D.C., by Eugene I. Lambert, Esq., and Christopher M. Little, Esq.; Thomas E. Quay, Esq., Fort Washington, Pennsylvania, Counsel for William H. Rorer, Inc.

PRELIMINARY STATEMENT

This is a rulemaking proceeding pursuant to the provisions of the Controlled Substances Act, Public Law 91-613 (1970), 21 U.S.C. Section 801 et seq. By notice dated April 6, 1973, as amended on April 17, 1973, the Director of the then Bureau of Narcotics and Dangerous Drugs (BNDD) found that methaqualone and its salts:

1. Have a high potential for abuse;
2. Have a currently accepted medical use in treatment in the United States; and
3. May, when abused, lead to severe physical and psychological dependence.

on the basis of these findings, the Director proposed an amendment of 21 CFR 1301.15 by listing the drug methaqualone in Schedule II pursuant to the provisions of the Act.

On May 14, 1973, William H. Rorer, Inc. (Rorer) requested a hearing concerning the proposed amendment of the list of drugs contained in Schedule II of the Bureau's regulations (41 FR Exhibit 6). In its comments on the Bureau's proposal, Rorer contended essentially that the Bureau had failed to meet one of the statutory prerequisites to the listing of the drug under Schedule II because of a failure to show that abuse of the drug "may lead to severe psychological or physical dependence" (41 FR Exhibit 7).

Subsequent to Rorer's request for a hearing, prehearing conferences were held on June 15 and June 29, 1973. The evidentiary hearings were held on July 17 and 18 and August 1 and 2, 1973. The record was closed on the last day of hearings and proposed findings and replies were filed by the parties on August 31 and September 14, 1973.

Rorer does not contest the Drug Enforcement Administration's findings that methaqualone and its salts:

1. Have a high potential for abuse; and

2. Have a currently accepted medical use in treatment in the United States.

The sole issue to be decided is whether the abuse of methaqualone "may lead to severe psychological or physical dependence."

This matter is now before the undersigned for final consideration of DEA's notice of proposed rulemaking, Rorer's comments and requests for hearing, the evidence, the proposed findings of fact, conclusions and briefs filed by counsel for the Government and for Rorer. Consideration has been given to the proposed findings of fact, conclusions and briefs filed by the parties and all proposed findings of fact and conclusions not herein specifically found or concluded are rejected; the undersigned, having considered the entire record herein, makes the following recommended findings of fact and conclusions drawn therefrom:

RECOMMENDED FINDINGS OF FACT

1. Methaqualone is a depressant drug of the sedative hypnotic group (Fort 54).

2. A drug is any biologically active substance that alters the physiology or chemistry of the body whether used in the treatment of illness or used for non-medical social purposes (Fort 53).

3. The psychoactive or mind-altering category of drugs comprises those drugs whose primary effect is on the mind or consciousness of the individual (Fort 53).

4. The central nervous system depressants are drugs that relieve anxiety (sedatives) or induce sleep (hypnotics) (Rorer Exhibit 2, p. 10).

The depressant drugs are one of the major subtypes of the psychoactive or mind-altering drugs. They decrease or dampen the electrical and chemical activity of the brain beginning with the frontal areas and then with progressive dosages, spread to involve the lower centers of the brain on to and including control of respiration and heart action (Fort 53-54).

38 FR 9170 (1973), 38 FR 10010 (1973).

BNDD is one of the predecessor agencies of the present Drug Enforcement Administration (DEA).

Rorer is a principal manufacturer and distributor of methaqualone under the brand name Quaalude (41 FR Exhibit 6).

The depressant drugs are comprised of the sedative hypnotic group which includes the barbiturates, methaqualone, and a variety of other drugs. The narcotics such as heroin, morphine, codeine, and methadone are also included among the depressant drugs (Fort 54).

5. The sedative hypnotic drugs which work on the central nervous system, tend to produce drowsiness, diminish alertness and decrease inhibitions. They impair muscular coordination and to some extent vision, as well as judgment, reasoning, and memory. These results vary with the dosage consumed (Fort 54-55).

The short-term effect of a large dose of a depressant drug or of a sedative hypnotic drug may progress into stupor and coma. If the dose is sufficient in a concentrated time period, it may lead to death with the terminal stages of the individual's comatose state sometimes involving convulsions or

muscular movements of the limbs and a variety of other symptoms (Fort 55).

6. The standard drug in the sedative hypnotic class are the barbiturates (Fort 56).

In the strict sense, methaqualone is a non-barbiturate hypnotic (Brown 210). Nevertheless, there is a substantial element of resemblance between methaqualone and the barbiturate hypnotics in terms of the chemical and pharmacological properties of this drug (Brown 210). As far as methaqualone's pharmacology and biochemistry is concerned, it is almost indistinguishable from the short-acting barbiturates (Brown 218, 227).

The accepted medical use for the barbiturate drugs is to relieve tension, anxiety, stress, or to induce sleep. Another common use is as an adjunct in the treatment of certain forms of epilepsy and as a preanesthetic medication (Fort 57).

Methaqualone, like the barbiturates, is medically prescribed for sedation or for the induction of sleep. It is also used nonmedically for the same reasons as other sedative hypnotics, viz., a user would use it in terms of turning on, feeling good, getting high, escaping, or relaxing (Fort 54-55).

Methaqualone would be closest to the short-acting barbiturates such as pentobarbital and secobarbital. By short-acting, it is meant that the drug has a quick onset of action somewhere between two and six hours (Fort 57).

7. The therapeutic dose of methaqualone for sedation would be 75 to 150 milligrams. There is an increasing practice of using the larger tablet, namely, 150 milligrams, although 75 milligrams was previously indicated as satisfactory. A therapeutic dose for hypnosis, namely, sleep induction, would be 300 milligrams. The drug is also manufactured in tablets of 400 milligrams and 500 milligrams (Fort 58).

8. Use of a drug means that the person has consumed it. Abuse of a drug means that part of drug use where heavy use measurably impairs health, and/or social or occupational function. For example, drug abuse may impair the body organs such as the liver, impair faculties while driving, or lead to interpersonal conflict associated with heavy use of the drug (Fort 59-70).

9. Physical dependence means addiction and includes the elements of tolerance and withdrawal illness or abstinence syndrome (Fort 70, 11, 74).

10. Tolerance is the body's ability to adapt to an alien compound such as a drug. It is measurable by pharmacological or chemical tests (Brown 237).

The practical consequence of tolerance is that an individual must take increasing amounts of a particular substance to obtain the same effect (Matthew 253).

Tolerance is part of the withdrawal syndrome since it is highly probable that an individual who has become tolerant to a drug will exhibit the withdrawal or abstinence syndrome when the drug is stopped (Matthew 253-54, Fort 74). In the case of the sedative hypnotics, tolerance and the withdrawal syndrome always go together (Matthew 254).

11. The abstinence syndrome is evidenced by symptoms such as restlessness, agitation, a fast pulse, and frequently, sweating. This may progress through various stages to toxic psychosis and epileptic fits (Matthew 257).

Toxic psychosis is characterized by hallucinations and delusions similar to delirium tremens from alcohol withdrawal (Matthew 257).

12. Severity of physical dependence is measured primarily in terms of the duration and danger of the withdrawal symptoms exhibited (Wisland 458).

13. The barbiturate-alcohol type dependence is the severest kind of physical or psychological dependence occurring with the mind-altering drugs (Fort 100-01, Deutsch 473-74). In the case of sedative-hypnotic dependence, there is central nervous system involvement and withdrawal will precipitate serious syndromes such as convulsions, delirium and organic psychoses which can be life threatening (Deutsch 473).

While withdrawal may be fatal in the case of the sedative hypnotic drugs, this does not occur in the case of narcotics (Fort 75).

14. A clinical study on 115 patients poisoned with methaqualone correlating blood levels of the drug with degree of consciousness, objectively demonstrated the development of tolerance in the case of methaqualone with respect to 42 individuals (Brown 219-20, Matthew 256-57, Government Exhibit 30).

Tolerance to methaqualone on the part of seven patients was established by the administration of a sodium pentobarbital tolerance test. Such patients were also given pentobarbital for the purpose of treatment, the average patient requiring more than 200 milligrams of pentobarbital, indicating a rather marked dependence on this type of drug (Deutsch 482). Detoxification of such individuals with gradually reduced doses of pentobarbital took approximately three weeks (482-83).

The opinion of Dr. Brown, who is a clinical biochemist, is entitled to considerable weight on this point.

15. Proof that individuals may become tolerant to methaqualone demonstrates that abuse of this drug may lead to physical dependence. In the case of the sedative hypnotics, such as methaqualone, tolerance is one of the indicia of the withdrawal syndrome (Finding 19, supra).

16. The fact that sedative hypnotic drugs can be cross-substituted indicates they are of equal dependence liability (Fort 86-87).

17. In the case of withdrawal from methaqualone, a patient would be expected to go through the minor side effects appearing after eight hours or more. These symptoms would then continue over the next 24 to 28 hours. The patient would then have a significant chance of going on to the major withdrawal symptoms such as convulsions, organic psychosis, and delirium (Deutsch 484). A computer study of the symptoms of patients, who by history had taken methaqualone daily, when they could not get the drug, demonstrated that they had an abstinence syndrome indistinguishable from individuals taking tuinal or seconal (Deutsch 470).

Opinion testimony such as that of Dr. Matthew, Dr. Fort, and Dr. Deutsch based on an examination of and interviews with abusers of methaqualone, that abuse of this drug has severe physical dependence liability is persuasive (Fort 106, 113-14, 170-71, Deutsch 484, 473, Matthew 258).² The record demonstrates their qualifications to make such a judgment based on their evaluation of withdrawal symptoms exhibited in the early stages or on their assessment of histories taken from methaqualone abusers. Such opinions need not be based on an examination

of the entire clinical course of withdrawal. Correct medical procedure and ethical considerations require that treatment be instituted to prevent the dangerous or life-threatening symptoms of the later stages of withdrawal (Fort 81, Matthew 258, Deutsch 481).

18. The abuse of methaqualone may lead to severe physical dependence (Findings 9 to 17, supra).

19. " . . . In general, a person is considered as psychologically dependent upon drugs when the physical sensation or psychological state brought about through the use of the drug is of such a nature that he desires the repetition of the sensation or state, and feels more or less psychological disturbance or distress during periods of abstinence from the drug." "Comprehensive Drug Abuse Prevention and Control Act of 1970" (H. Rep. No. 91-1444 (Part 1) 81st Cong. 2nd Sess. 1970 at 7; See also Fort 106 and Deutsch 47, -78).

² Fenobarbital is a short-acting barbiturate (Fort 67).

³ Dr. Matthew of the Regional Poisoning Treatment Center in Royal Infirmary in Edinburgh, United Kingdom, has personally observed about 50 individuals severely addicted to methaqualone (258).

Dr. Deutsch, who treated seven abusers of methaqualone, testified that if treatment had not interrupted the withdrawal syndrome, these individuals would have been expected to develop the abstinence syndrome with a significant chance of going on to the major withdrawal symptoms such as convulsions and toxic psychosis, which are life threatening (Deutsch 484, 473).

20. Physical and psychological dependence overlap (Fort 108). Nevertheless, a person may have severe psychological dependence in the case of a particular drug, without being physically dependent on it, and it is possible to be severely psychologically dependent on a drug without exhibition of withdrawal symptoms (Wieland 467).

21. The symptoms of psychological dependence range from mild symptoms such as feelings of uneasiness and restlessness, through manifestations such as a compulsion or craving for the drug so that the individual cannot function without it (Fort 106-07).

22. Case histories taken by Dr. Lionel Deutsch, a New York physician in charge of the inpatient detoxification service at Queens Hospital, demonstrate that persons abusing methaqualone exhibited a craving for the drug lasting from two weeks to a month or more, relapsed after discontinuance, and persisted in use of the drug despite social pressure (Deutsch 477).

23. Abuse of methaqualone may lead to severe psychological dependence (Deutsch 477, Fort 114, 107-08, Findings 20-22, supra).

Discussion

This is a case of first impression. It is evidently the first contested rulemaking proceeding under the Controlled Substances Act pertaining to the scheduling of a drug under Section 202 of the statute (21 U.S.C. Section 812).

The Government and Rorer disagree both on the meaning of the applicable statutory standard, namely:

"Abuse of the drug or other substances may lead to severe psychological or physical dependence"

and the weight which would be accorded to the testimony of the witnesses and certain of the exhibits as well as the inferences which may be drawn therefrom.

It is Rorer's position that the term "may lead to" should be construed as meaning "can be expected to lead in a significant percentage of cases" to severe psychological or physical dependence. DEA argues on the contrary, that the imposition of such a standard should be based either upon the legislative history or on the basis of this record.

and in this connection, the Government contends that the term should be equated with meaning "might lead to" or "could lead to" severe psychological or physical dependence. There is no precedent affording guidance

on this subject. The Act does not define the term "may lead"; nor does the legislative history in the form of the Senate and House reports give specific guidance on this issue. It is evident, however, from the text of the statute that the scheduling of drugs thereunder is intended to be a prophylactic measure before a drug becomes a public health problem in the form of addiction, i.e., severe physical or psychological dependence. This is clear from the plain meaning of the word "may" which requires that the Government demonstrate that the drug has this potential. Moreover, the statute in this respect does not impose a quantitative standard. The dispute between the Government and Rorer as to the adequacy of the proof and the weight to be attributed to certain of the testimony should be evaluated in the light of these considerations.

The proposed findings and supporting argument principally raise the question of how much weight should be accorded to the expert testimony where there is a conflict between the witnesses or with other items of evidence. An administrative agency, however, is not precluded by conflicts in the evidence from passing on the weight to be accorded to the testimony and other portions of the evidentiary record and making findings thereon. See *Korber Hats, Inc. v. FTC*, 311 F.2d 858, 382 (1st Cir. 1962); *Carter Products Inc. v. FTC*, 268 F.2d 461, 491 (9th Cir. 1959) cert. denied 361 U.S. 824 (1959); *NLRB v. Nevada Consolidated Copper Corp.*, 318 U.S. 106, 108 (1943).

The main thrust of Rorer's argument is that the testimony of the DEA witnesses is speculative, since none had observed severe withdrawal or psychological symptoms resulting from methaqualone abuse. The testimony of Drs. Fort, Matthew and Deutsch, on the basis of their observations of abusers of methaqualone and their assessment of the histories of such individuals that abuse of the drug has severe physical dependence liability, however, cannot be dismissed as unfounded speculation. These experts clearly have the qualifications to make such a judgment based on their assessment of withdrawal symptoms exhibited in the early stages and on their evaluation of the histories taken from and interviews with methaqualone abusers. This evidence supports the finding that there is a probability that methaqualone abuse may lead to severe physical dependence. Neither the demeanor or the testimony of these witnesses gave any indication that they would engage in speculation on questions of this nature. Their testimony that the failure to treat patients prior to the onset of major withdrawal symptoms would be dangerous and contrary to sound medical practice is convincing. Under the circumstances, a prognosis by expert opinion of this nature as to the consequences of drug abuse is within the contemplation of the statute whose purpose is to prevent a public health problem before it arises.

There are additional reasons for not rejecting the opinion of DEA's experts for failure to meet a standard of hard medical evidence. Clinical observation by physicians involves not only what the physician sees with his eyes but also requires an exercise of judgment as to the significance of the patient's report of his subjective state. The standard

See *Wieland, et al.*

of the DEA witnesses as to their observations of patients and evaluation of the histories of drug abuse are not to be regarded as an exercise of judgment and should be regarded as probable. Finally, the view of the DEA witnesses that the abstinence syndrome is best established through determining tolerance is evidently an accepted scientific concept which should not be rejected as speculative.

Turning specifically to the issue of psychological dependence, the testimony of the DEA experts, and in particular, that of Dr. Deutsch, who carefully recorded the histories of methaqualone abusers is persuasive. Certainly, his findings based on detailed histories cannot be considered as conjectural. The opinion evidence of the DEA witnesses compels the finding that there is a probability that abuse of methaqualone will lead to severe psychological dependence. Consideration has been given to the testimony of Dr. Wieland that although there may be cases of methaqualone abuse leading to severe psychological dependence, this is "not dealing in probabilities" (Tr. 487). To the extent that Dr. Wieland's views on this point conflict with those of Dr. Deutsch, the opinion of the latter appears entitled to more weight in the light of his empirical work on this point demonstrated by the record.

Since an individual may have severe psychological dependence without exhibiting symptoms of the withdrawal syndrome, a perfect observation of the full clinical course of withdrawal cannot be prerequisite to a finding as to the existence of severe psychological dependence.

Although there are conflicts in the evidence between the testimony of DEA's experts and those of Rorer, the Government, by a clear preponderance of the evidence, has established that abuse of methaqualone and its salts may lead to severe psychological and physical dependence. There is no indication in the testimony of DEA's experts that severe psychological or physical dependence would be limited to an insignificant number of instances of abuse of the drug were abused.

Consideration has been given to the contention that the Government Exhibit 20 demonstrates that methaqualone does not lead to severe psychological or physical dependence. This exhibit, and Dr. Matthew's testimony at Tr. 254-57 and 272-78 are cited in the proposition that 42 persons proved tolerant to methaqualone were abruptly withdrawn from the drug and not a single case of severe physical or psychological withdrawal symptoms reported. However, the article is devoted to the treatment of methaqualone poisoning by conservative management such as avoidance of diuretics and does not appear to address itself to the withdrawal problem as such. Individuals tolerant to the drug are not necessarily poisoned (Tr. 260-61). As a result, the silence with respect to withdrawal of an article devoted to treatment of Mandrax poisoning affords an uncertain basis for drawing an inference conflicting with the testimony of Dr. Matthew. His express testimony that he treated persons considered dependent on methaqualone with barbiturates or a strong tranquilizer with a barbiturate and that persons tolerant to the drug, on withdrawal, could be expected to display the abstinence syndrome is persuasive and not vitiated by the possible conflicting inference drawn from the article in question. Moreover, as DEA states, Dr. Matthew did not testify with respect to the article except on the development of tolerance and the treatment of Mandrax poisoning.

See Dr. Deutsch's citation of Cecil and Loeb, a "classical textbook of medicine", on this point (Tr. 481).

BEST COPY AVAILABLE

Under the Controlled Substances Act of 1970 (21 U.S.C. 801 et seq.).

1. The Controlled Substances Act of 1970 was intended to protect the public health and safety by establishing a system of control procedures for drugs with a potential for abuse.

2. These controls include registration requirements, export and import restrictions, labeling and packaging requirements, production quotas, recordkeeping procedures and reports, order forms and prescription restrictions.

3. The controls are effected through a system of scheduling drugs or other substances according to criteria set forth in the Controlled Substances Act of 1970 relating to legitimate medical use and abuse potential.

4. Methaqualone is a drug, with a high potential for abuse and a currently accepted medical use in treatment in the United States within the meaning of 21 U.S.C. 812(b)(2)(A) and 21 U.S.C. 812(b)(2)(B), as Rorer has stipulated.

5. The Government has proved by substantial evidence of record that the abuse of the drug methaqualone may lead to severe psychological dependence within the meaning of 21 U.S.C. 812(b)(2)(C).

6. The Government has proved by substantial evidence of record that the abuse of the drug methaqualone may lead to severe physical dependence within the meaning of 21 U.S.C. 812(b)(2)(C).

THEODOR F. VON HARTZ,
Administrative Law Judge.

Based on the investigations of the Drug Enforcement Administration and after careful consideration of the Recommended Decision printed above, as well as the entire record herein, and upon the scientific and medical evaluation and recommendation of the Secretary of Health, Education and Welfare, received pursuant to Section 201(b) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811(b)), the Acting Administrator, Drug Enforcement Administration, finds that methaqualone and its salts:

- (1) Have a high potential for abuse;
- (2) Have a currently accepted medical use in treatment in the United States; and
- (3) May, when abused, lead to severe physical and psychological dependence.

Therefore, under the authority vested in the Attorney General by section 201 (c) (21 U.S.C. 811(a)) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations (see 38 FR 18380, July 2, 1973), it is hereby ordered that:

1. Section 1301.02 of Title 21 of the Code of Federal Regulations be amended by adding a new paragraph (b) (10) to read as follows:

§ 1301.02 Definitions.

- (b) (10) Each of the substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific

chemical designation, listed in § 1303.12 (e) of this chapter.

2. Section 1303.12 of Title 21 of the Code of Federal Regulations be amended by adding a new paragraph (e) to read as follows:

§ 1303.12 Schedule II.

(e) *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Methaqualone 2565

The requirements imposed upon the substances controlled by this order shall become effective as follows:

1. *Registration.* Any person who manufactures, distributes, engages in research, imports or exports any of these substances or who proposes to engage in the manufacture, distribution, importation, or exportation of, or research with, any of these substances, shall obtain a registration to conduct that activity on or before November 5, 1973.

2. *Security.* These substances must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(a), 1301.73, 1301.74(a), 1301.75, and 1301.76 of Title 21 of the Code of Federal Regulations on or before January 3, 1974. In the event that this imposes special hardships, the Drug Enforcement Administration will entertain any justified requests for extensions of time.

3. *Labeling and packaging.* All labels on commercial containers of, and all labeling of, any of these substances which are packaged after April 15, 1974, shall comply with the requirements of §§ 1302.03-1302.05 and 1302.08 of Title 21 of the Code of Federal Regulations. In the event this effective date imposes special hardships on any "manufacturer", as defined in section 102(14) of the Controlled Substances Act, 21 U.S.C. 802(14), the Drug Enforcement Administration will entertain any justified requests for an extension of time.

4. *Quotas.* Quotas on these substances will be established to take effect on January 1, 1974. All interested persons required to obtain quotas shall submit applications pursuant to § 1303.22 of Title 21 of the Code of Federal Regulations on or before November 15, 1973.

5. *Inventory.* Every registrant required to keep records who possesses any quantity of any of these substances shall take an inventory, pursuant to §§ 1304.11-1304.19 of Title 21 of the Code of Federal Regulations, of all stocks of those substances on hand on November 5, 1973.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21-1304.27 of Title 21 of the Code of Federal

27520

Regulations shall maintain such records on these substances commencing on the date on which the inventory of those substances is taken.

7. *Reports.* All registrants required to file reports with the Drug Enforcement Administration pursuant to §§ 1304.37-1304.41 of Title 21 of the Code of Federal Regulations shall report on the inventory taken under paragraph 5 above and on all subsequent transactions.

8. *Order forms.* Each distribution of any of these substances on or after November 5, 1973, shall utilize an order form pursuant to Part 1305 of Title 21 of the Code of Federal Regulations except as permitted in § 1305.03 of that title.

9. *Importation and exportation.* All importation and exportation of any of the substances on and after November 5, 1973, shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal liability.* Pursuant to Title 21 of the Code of Federal Regulations § 1308.48, the Acting Administrator, Drug Enforcement Administration hereby finds that:

1. Individuals are taking methaqualone in amounts sufficient to create a hazard to their own health or the safety of the community;

2. There exists significant diversion of methaqualone from legitimate channels;

3. Persons are taking methaqualone on their own initiative rather than on the advice of a physician.

4. Methaqualone is being used in suicides and attempted suicides as well as causing other injuries resulting from unsupervised use.

Therefore, the Acting Administrator finds that conditions of Public Health and Safety necessitate that any activity with any of the substances, not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act, conducted after October 4, 1973, shall be unlawful, except that any person who is not now registered to handle these substances but who is entitled to registration under those Acts may continue to conduct normal business or professional practice with those substances between the date on which this order is published and the date on which he obtains or is denied registration.

11. *Other.* In all other respects, this order is effective on October 4, 1973.

Dated October 2, 1973.

JOHN R. BARTELS, Jr.,
Acting Administrator, Drug Enforcement Administration,
U.S. Department of Justice.

[FR Doc. 73-31243 Filed 10-3-73; 6:45 am]

1 hjl TRANSCRIPT OF 1/25/77 - DECISION ON MOTION,
2 STIPULATION RESERVING RIGHT TO APPEAL, GUILTY PLEA
3 UNITED STATES DISTRICT COURT

4 SOUTHERN DISTRICT OF NEW YORK

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7 UNITED STATES OF AMERICA :
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vs.

75 Cr. 1098

LAWRENCE FRIEDMAN,

Defendant.

New York, New York

January 25, 1977 - 9:45 a.m.

B E F O R E:

HON. MORRIS E. LASKER,

District Judge

APPEARANCES:

ROBERT B. FISKE, JR., ESQ.

United States Attorney for the
Southern District of New York

BY: ALLEN BENTLEY, ESQ.,

Assistant United States Attorney

FREDERICK A. BLOCK, ESQ.

Attorney for defendant

1 jhjl

2 (Case called.)

3 MR. BENTLEY: The government is ready.

4 MR. BLOCK: Defendant is ready.

5 Good morning, your Honor.

6 THE COURT: Good morning, Mr. Block.

7 MR. BLOCK: At this time, if your Honor please,
8 the defendant Lawrence Friedman offers to withdraw his plea
9 of not guilty previously entered to indictment--to the first
10 count of indictment 75 Criminal 1098 and offers to plead
11 guilty to that count, reserving, however, if your Honor please,
12 pursuant to the practice which I now understand is permitted
13 in this circuit, reserving, however, his right, the defendant's
14 right to challenge on appeal your Honor's order of November
15 29, 1976, which denied, after a hearing, a motion to dismiss
16 the indictment on several grounds.

17 THE COURT: And reserving also your right to
18 appeal what will be after I make it now the denial of the
19 motion that you filed on January 4, 1977.

20 MR. BLOCK: Yes, sir. That motion was on two
21 grounds.

22 THE COURT: Yes. I am going to rule on that. I am
23 just stating for the record that I understand that the plea
24 of guilty will be subject to the right to appeal from an ad-
25 verse ruling on that motion as well.

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2 MR. BLOCK: Yes, sir.

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THE COURT: Mr. Bentley, I believe that if it is not required it's the preferred practice for the government to indicate its consent to such arrangement.

MR. BENTLEY: We consent to that arrangement, provided that Mr. Block files his notice of appeal within the ten day period after sentencing and prosecutes it diligently. Otherwise we have no opposition.

THE COURT: That is an appropriate condition. He will have to do so.

I am prepared to rule, before taking the plea of guilty, I am prepared to rule on the defendant's motion filed January 4, 1977.

There were three propositions raised by that motion. The first was that the statute under which Mr. Friedman has been indicted is unconstitutional on its face because it delegates to the Attorney General the right to add to the list of controlled drugs other drugs not originally listed.

Second, that as applied, the statute is unconstitutional because the Attorney General in fact further delegated his authority to specified persons within the Drug Enforcement Administration.

And finally, that there is a fatal irregularity in the law in that there had not been adequate publication of

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2 the fact that methaqualone, which is the subject of this
3 indictment, had been added to the list of proscribed drugs.

4 The questions thus raised are not capricious.
5 Nevertheless, I believe that they do not justify legally a
6 dismissal of the indictment. The question of the legality
7 of delegation of authority to the Attorney General has been
8 exhaustively or at least detailedly treated by Judge Motley in
9 an excellent opinion, which is, as we all know, now on appeal
10 before the Second Circuit.

11 I can see no value in adding to the rationale or
12 argumentation and authority which is well set forth in that
13 opinion and which I find persuasive.

14 The issue of the legality of the delegation by
15 the Attorney General to the DEA has been thoughtfully considered
16 and decided in favor of the government in U.S. against Benish, 38
17 Federal Supp. 557, Eastern District of Pennsylvania, 1975.
18 I agree with that ruling.

19 Incidentally, I didn't name the case that Judge
20 Motley had decided, but it's U. S. against Pastor and Weinber

21 Finally, as to the claim of inadequate publication,
22 there are two grounds on which I believe the motion must
23 be denied. First, I have before me at the present time the
24 Code of Federal Regulations in which the relevant regulation
25 is published and find that on page 73--this is the April 1,

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1975 issue, revision--on page 73, in the lower right-hand column, methaqualone is published, and below that there is an indication of several prior publications in the Federal Register, June 20, 1974 and February 14, 1975, March 6, 1975.

I cannot be sure that those references establish adequate publication, but they seem to.

More important is the fact that the courts of the Second Circuit in such cases as U. S. against Aarons, 310 Federal Second 341, and other courts since, such as U.S. against Andrew, 408 Federal Supp. 107, in the Northern District of California, 1976, and U. S. against Monroe, 408 Federal Supp. 276, Northern District of California, 1976, have held, and I agree with them, that unless there is proof that the defendant had no actual knowledge of the illegality of the transaction in question, the lack of publication is not fatal to the imposition of criminal responsibility.

For the reasons indicated, the motion filed January 4, 1977 is denied, and will be so endorsed.

Now I am prepared to proceed with taking the plea. Will you both come forward, please.

Mr. Block, I normally question counsel as to his knowledge of the facts of the case, the amount of time he spent with his client and so forth, but there is so much already on the record in this case of your participation that

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2 I think that is unnecessary. I will proceed to question Mr.
3 Friedman. Some of these questions I know the answers to my-
4 self.

5 BY THE COURT:

6 Q Mr. Friedman, how old are you?

7 A 28 years old.

8 Q Mr. Friedman, you have gone through the first
9 year in law school, is that right, or you are in the first
10 year of law school?

11 A I am in my second term of the second year.

12 Q So that means you already have a BA or a BS
13 degree, is that right?

14 A Correct, your Honor.

15 Q Are you in good health?

16 A Yes, your Honor.

17 Q Have you ever been addicted to either drugs or
18 alcohol?

19 A No, your Honor.

20 Q Are you under the influence of any such sedative
21 or drug at the moment?

22 A No, your Honor.

23 Q You know, don't you, Mr. Friedman, that you have
24 a right to go to trial before a jury in this matter?

25 A Yes, your Honor.

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2 Q And you understand that if you did go to trial
3 before a jury you couldn't be convicted unless the jury
4 unanimously agreed that the government had proven its case
5 against you beyond a reasonable doubt?

6 A Yes, your Honor.

7 Q You understand that at trial Mr. Block or counsel
8 could cross examine witnesses against you, you could face
9 those witnesses, and you would have your option of testifying
10 or not?

11 A Yes, your Honor.

12 Q Do you understand if I accept your plea of
13 guilty that there will be no trial, there will be no further
14 proceedings, except simply sentencing proceedings?

15 A Yes, your Honor.

16 Q Do you understand that the possible maximum
17 penalty for this offense is five years in prison and a fine
18 of--

19 THE COURT: Mr. Bentley, can you tell me the fine?

20 MR. BENTLEY: A \$15,000 fine, and if a prison term
21 is imposed, a two year special parole must follow.

22 THE COURT: That is a minimum, I suppose.

23 MR. BENTLEY: Yes.

24 BY THE COURT:

25 Q Let me review that. That the maximum penalty

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2 here is a five year prison term, a \$15,000 fine, and if a
3 term of custody is imposed, then a minimum two year special
4 parole must be imposed thereafter, which could theoretically
5 continue for life. Do you understand that?

6 A Yes, your Honor.

7 Q Do you understand that if I accept your plea of
8 guilty I have the right to impose the same penalty as could
9 have been imposed if you were tried and found guilty by a
10 jury?

11 A Yes, your Honor.

12 Q Do you understand that if I accept your plea of
13 guilty you will have no right to appeal to a higher court from
14 any lawful sentence that I impose? You will have the right
15 to appeal from the issues that Mr. Block reserved, but not
16 from the sentence. Do you understand that?

17 A Yes, your Honor.

18 Q And do you understand that if I accept your plea
19 of guilty you will not hereafter automatically have the right
20 to withdraw that plea, for all practical purposes a plea of
21 guilty is final?

22 A Yes, your Honor.

23 Q Mr. Friedman, would you tell me just what you
24 did that constitutes you guilty of count one, which I gather
25 is the conspiracy count.

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MR. BLOCK: That's correct.

2

A I conspired to sell the methaqualone tablets.

3

Q With whom did you agree?

4

A Jeffrey Nach, an undercover agent.

5

Q What was to be your role?

6

A I was supposed to tell him where it was.

7

Q You mean where it was physically located?

8

A Yes.

9

Q Did you do any physical handling?

10

A No, your Honor.

11

Q You were simply to find out whether it could be made available and then advise him?

12

A Right, lead him there.

13

Q Did you do what you agreed to do?

14

A Yes, your Honor.

15

Q Were you to receive money for doing that?

16

A Excuse me, your Honor?

17

Q Were you to receive money for doing that?

18

A Yes, your Honor.

19

Q And did you receive money for doing that?

20

A No, your Honor.

21

Q Was that because the cops moved in before you

22

were paid?

23

A Yes, your Honor.

24

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1 Q Did anybody force you or exert pressure on you to
2 do what you did?

3 A No, your Honor.

4 Q Has anybody told you that if you pleaded guilty
5 you would receive a lighter sentence than if you didn't
6 plead guilty?

7 A No, your Honor.

8 Q Has anybody made any representations to you with
9 regard to this proceeding except for the reservation of these
10 points to be put before the Court of Appeals?

11 A I don't think I understand that.

12 Q Let's put aside the reservation. Has anybody
13 made any representations to you as to what your sentence
14 might be here?

15 A No, your Honor.

16 MR. BLOCK: Excuse me, your Honor. On the last
17 two questions, I think I might have told the defendant that
18 if he pleaded guilty instead of going to trial, in the
19 circumstances of this particular case, that he might well get
20 a lighter sentence. And then, with respect to the other
21 question your Honor asked, your Honor had indicated something
22 at the time of the hearing.

23 THE COURT: That's right. I did say at an
24 earlier hearing that if Mr. Friedman had no prior convictions
25

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or serious mark on his record it was not likely that I would impose a custodial sentence, and that is still true. But I do want Mr. Friedman to understand that a court must and does and I do reserve all the authority which the law gives me to impose whatever sentence I believe is just after a presentence report has been completed and I have further information.

BY THE COURT:

Q You understand that, Mr. Friedman?

A Yes, your Honor.

Q Are you pleading guilty now, Mr. Friedman, of your own free will?

A Yes, your Honor.

Q And what is it that has persuaded you to plead guilty at this time?

A I realize that I did wrong and I am pleading guilty to it.

Q You do admit the facts here?

A Yes, your Honor.

Q And you do admit your moral responsibility for it?

A Yes, your Honor.

THE COURT: Mr. Friedman, Mr. Bentley, Mr. Block, I am satisfied on the basis of this colloquy that Mr. Friedman understands the nature of his rights to trial and associated rights, that he has intelligently and voluntarily waived

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2 those, that he understands the nature and consequences of
3 pleading guilty to this charge, and that he has intelligently
4 and voluntarily pleaded guilty to the charge, and that there
5 is a factual basis for his doing so, and I will accept the
6 plea.

7 Sentence will be imposed on March 4, 10 o'clock,
8 in room 1106.

9 Mr. Friedman, I have no reason to believe that you
10 won't appear, but if you should fail to do so that would be
11 a separate offense for which you could be separately punished.

12 THE DEFENDANT: Yes, your Honor, I understand.

13 MR. BLOCK: Would your Honor authorize me to
14 obtain the minutes of this proceeding today under the Criminal
15 Justice Act?

16 THE COURT: Yes, I will.

17 Mr. Bentley, I assume the government is satisfied
18 to allow Mr. Friedman to remain on his present bail arrange-
19 ments?

20 MR. BENTLEY: We have no objection to continuing
21 his bail status. He has always appeared when required.

22 THE COURT: Very good.

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TRANSCRIPT OF 3/4/77 -SENTENCE PROCEEDINGS
GW

1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

LAWRENCE FRIEDMAN,

Defendant.

75 Cr. 1098

New York, New York
March 4, 1977
10:30 A.M.

B e f o r e:

HON. MORRIS E. LASKER,

District Judge.

A p p e a r a n c e s:

ROBERT B. FISKE, JR., ESQ.,
United States Attorney,

ROBERT J. COSTELLO, ESQ.,
Assistant United States Attorney

FREDERICK BLOCK, ESQ.,
Attorney for defendant.

1
2 THE CLERK: United States of America
3 against Lawrence Friedman.

4 Government ready?

5 MR. COSTELLO: Ready.

6 THE CLERK: Defendant ready?

7 MR. BLOCK: Defendant ready.

8 THE COURT: Mr. Costello, is it?

9 MR. COSTELLO: Yes.

10 THE COURT: Mr. Costello, I think you know
11 that I am really exceptionally familiar with the factual
12 background in this case, having dealt with co-defendants
13 and having held lengthy hearings with regard to Mr.
14 Friedman's case. Is there anything you think I don't
15 know?

16 MR. COSTELLO: No, your Honor.

17 THE COURT: Mr. Block.

18 MR. BLOCK: If your Honor please, I am
19 well aware that your Honor is thoroughly familiar with
20 this case. There are just two or three things that I
21 want to say.

22 Number one, we had an opportunity to look
23 at the probation report, and we have no quarrel with it.

24 I can advise the Court that my client is
25 doing very well in his second year at law school. He

1
2 tells me that he has been invited to participate in compe-
3 tition for the Law Review. They have competition for it.

4 THE COURT: I am very impressed.

5 MR. BLOCK: And in addition to that, I
6 can inform your Honor that the situation in Brooklyn may
7 well result in the dropping of all the charges in light
8 of the situation that your Honor is familiar with.

9 Your Honor, all I can ask is that you be
10 as lenient as possible in this case.

11 THE COURT: All right. Mr. Friedman, both
12 as a law student and perhaps otherwise, you know you
13 have a right to say anything you want to me about the
14 sentence to be imposed in this case. I would be very
15 glad to hear it.

16 THE DEFENDANT: Your Honor, all I can say
17 is that this has been a tragic period in my life. I
18 am very sorry that I ever got involved in the situation.
19 I feel that myself and my wife have been living through
20 very hard conditions and we are both trying our best.
21 This is something I can never repeat in the future. I
22 feel that it was the most foolish thing I have ever done
23 in my life. I would like to try to make something out
24 of my life. I would appreciate your leniency, your
25 Honor.

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2 THE COURT: All right. Mr. Friedman,
3 you stand guilty on your own plea for conspiracy to
4 violate the federal narcotics laws in relation to the
5 distribution of quaaludes.

6 Against you also is the fact that there are
7 charges pending elsewhere against you. However, I think
8 I ought to leave it up to that court to decide whether
9 or not the penalty should be imposed for any offense
10 over there.

11 In your favor is the fact that you have been
12 a steady and dependable citizen except for this offense.
13 You have been employed as a teacher and you have done
14 a good job. You have made efforts to improve your
15 position in life by attendance at law school. You have
16 shown, at least by now, clear remorse in this case and
17 by now substantial cooperation and you have a solid and
18 affectionate marriage.

19 I do want to say before I come to the con-
20 clusion of my remarks that you and your co-defendants
21 here I think at least earlier in the stages of this
22 situation tended to brush this matter off as being made
23 into a federal case, so to speak, when it didn't deserve
24 it and to pity yourselves and feel sorry for yourselves.
25 There was a deliberate attempt to evade the law here,

1 Mr. Friedman, there was a deliberate attempt to evade
2 the law and make money. To that extent, the federal
3 authorities were quite correct in stopping it dead in
4 its tracks. However, having said all those things,
5 there is certainly no purpose to be served by your being
6 incarcerated at this time.
7

8 Accordingly, it is adjudged that the im-
9 position of sentence of imprisonment is suspended and the
10 defendant is placed on probation for a period of one and
11 a half year subject to the standing probation order of
12 this court.

13 Mr. Friedman, you have gone through a lot
14 here. I know you still have some matters which it has
15 been agreed you may appeal, and I assume those will be
16 appealed by Mr. Block in your behalf. I can't say I
17 hope that you are successful in that regard because I
18 think that the law was correctly stated, but that is
19 neither here nor there.

20 I do hope that the authorities in New Jersey,
21 if that is where you ultimately want to practice law,
22 will be flexible in their attitude in that situation; and
23 I would be prepared to say, if it ever becomes relevant,
24 you behaved responsibly and in a mature manner in your
25 appearances before me.

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THE DEFENDANT: Thank you, your Honor.

3

MR. BLOCK: Thank you, your Honor.

4

Your Honor, would you allow me to have the
minutes? This is a CJA case.

5

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THE COURT: Yes, I so direct.

7

Are there any open counts?

8

MR. BLOCK: No. There was only the conspiracy
count in which Mr. Friedman was named.

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MR. COSTELLO: I believe that is correct.

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NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA	:	IND. # 75 Cr. 1098
vs.	:	<u>NOTICE OF APPEAL</u>
LAWRENCE FRIEDMAN,	:	
Defendant	:	

-----x

S I R S :

PLEASE TAKE NOTICE that the defendant Lawrence Friedman, hereby appeals to the Court of Appeals for the Second Circuit (pursuant to the reservation of his right so to do, approved by the court and the attorney for the government at the time of the entry of his plea of guilty on January 25, 1977) from the denial by Hon. Morris E. Lasker, United States District Judge for the Southern District of New York, of his motions theretofore made and from his conviction on his plea of guilty as aforesaid, and from the sentence imposed upon him on March 4, 1977 by Judge Lasker, to wit, imposition of sentence suspended, one and a half years probation.

Dated: March 7, 1977.

FREDERICK H. BLOCK
Attorney for Defendant
919 3rd Avenue
New York, N.Y. 10022

TO: Clerk, United States District
Court, Southern District of N.Y.

United States Attorney for the
Southern District of New York
1 St. Andrews Plaza, N.Y., N.Y. 10007

BLOCK

AFFIDAVIT OF PERSONAL SERVICE

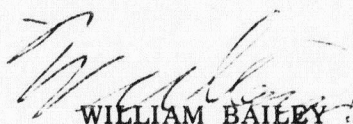
STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

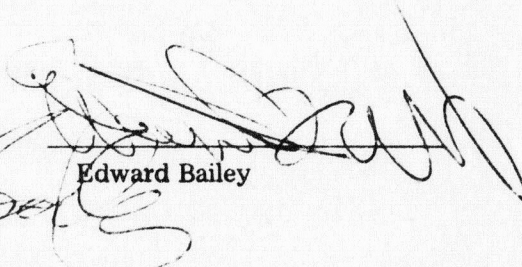
EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 28 day of April, 1977 at No. 1 St. Andre's Plaza, NYC 10007

deponent served the within Appendix
upon Robert B. Fiske, Jr., U.S. Atty.

the Appellee herein, by delivering 1 true
copy(ies) thereof to him personally. Deponent knew the person so
served to be the person mentioned and described in said papers as the
Appellee therein.

Sworn to before me this
28 day of April 1977.


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978


Edward Bailey

COPIES RECEIVED
ROBERT B. FISKE JR.
APR 28 1977
U. S. ATTORNEY
SO. DIST. OF N. Y.